



The Regular Meeting of the West Valley City Council will be held on Tuesday, March 24, 2015, at 6:30 PM, in the City Council Chambers, West Valley City Hall, 3600 Constitution Boulevard, West Valley City, Utah. Members of the press and public are invited to attend.

Posted 3/19/2015, 5:00 PM

## A G E N D A

1. Call to Order
2. Roll Call
3. Opening Ceremony: Councilmember Corey Rushton
4. Special Recognitions
5. Approval of Minutes:
  - A. March 10, 2015 (Regular Meeting)
6. Awards, Ceremonies and Proclamations:
  - A. Proclamation Recognizing April 2015 as Child Abuse Prevention Month
  - B. Proclamation Recognizing April 7, 2015 as National Service Recognition Day
7. Comment Period:

*(The comment period is limited to 30 minutes. Any person wishing to comment shall limit their comments to five minutes. Any person wishing to comment during the comment period shall request recognition by the Mayor. Upon recognition, the citizen shall approach the microphone. All comments shall be directed to the Mayor. No person addressing the City Council during the comment period shall be allowed to comment more than once during that comment period. Speakers should not expect any debate with the Mayor, City Council or City Staff; however, the Mayor, City Council or City Staff may respond within the 30-minute period.)*

*West Valley City does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.*

*If you are planning to attend this public meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting and we will try to provide whatever assistance may be required. The person to contact for assistance is Sheri McKendrick.*

- A. Public Comments
  - B. City Manager Comments
  - C. City Council Comments
8. Public Hearings:
- A. Accept Public Input Regarding Application No. SV-1-2015, filed by West Valley City, Requesting to Vacate all of John Henry Drive Located at 2365 South 2570 West
- Action: Consider Ordinance No. 15-12, Vacating all of John Henry Drive in West Valley City, Utah
9. Resolutions:
- A. 15-51: Authorize the City to enter into an Agreement with ExteNet Systems, Inc. and the Centennial Management Group, Inc. for the Design, Installation and Operation of a Distributed Network at the Maverik Center
  - B. 15-52: Approve a Franchise Agreement between WirelessBeehive.Com, LLC, and West Valley City for a Telecommunications Network in the City
  - C. 15-53: Authorize the City to enter into a Master Tax-Exempt Lease/Purchase Agreement and Property Schedule No. 1 with US BANCORP Government Leasing and Financing, Inc. with Respect to a Lease for the Purchase and Replacement of Police and Fire Radio Equipment
  - D. 15-54: Authorize the City to Purchase Radio Communications Equipment from Motorola Solutions, Inc. for use by the Police and Fire Departments
  - E. 15-55: Accept a Storm Drainage Easement and a Grant of Temporary Construction Easement from Redwood L&B, LLC, for Property Located at 2570 West 2365 South
10. Motion for Executive Session
11. Adjourn

## MINUTES OF COUNCIL REGULAR MEETING - MARCH 10, 2015

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, MARCH 10, 2015, AT 6:30 P.M., IN THE COUNCIL CHAMBERS, WEST VALLEY CITY HALL, 3600 CONSTITUTION BOULEVARD, WEST VALLEY CITY, UTAH. THE MEETING WAS CALLED TO ORDER AND CONDUCTED BY MAYOR BIGELOW.

### THE FOLLOWING MEMBERS WERE PRESENT:

Ron Bigelow, Mayor  
Lars Nordfelt, Councilmember At-Large  
Tom Huynh, Councilmember District 1  
Karen Lang, Councilmember District 3  
Steve Vincent, Councilmember District 4

Wayne Pyle, City Manager  
Sheri McKendrick, City Recorder

### ABSENT:

Corey Rushton, Councilmember At-Large  
Steve Buhler, Councilmember District

### STAFF PRESENT:

Paul Isaac, Assistant City Manager/HR Director  
Nicole Cottle, Assistant City Manager/CED Director  
Eric Bunderson, City Attorney  
Jim Welch, Finance Director  
Layne Morris, CPD Director  
Kevin Astill, Parks and Recreation Director  
Lee Russo, Police Chief  
John Evans, Fire Chief  
Sam Johnson, Strategic Communications Director  
Brandon Hill, Law Department  
Steve Lehman, CED Department  
Steve Pastorik, CED Department  
Mark Nord, CED Department  
Jeff Jackson, CED Department  
Jake Arslanian, Public Works Department

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### **OPENING CEREMONY**

The Opening Ceremony was conducted by Karen Lang who led the Pledge of Allegiance to the Flag.

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### **SCOUTS**

Mayor Bigelow welcomed Scout Troop No. 440 in attendance to complete requirements for the Citizenship in the Community merit badge.

16932

### **APPROVAL OF MINUTES OF STRATEGIC PLANNING MEETING HELD FEBRUARY 20 & 21, 2015, AND REGULAR MEETING HELD FEBRUARY 24, 2015**

The Council read and considered Minutes of the Strategic Planning Meeting held February 20 & 21, 2015, and the Regular Meeting held February 24, 2015. There were no changes, corrections or deletions.

After discussion, Councilmember Vincent moved to approve the Minutes of the Strategic Planning Meeting held February 20 & 21, 2015, and the Regular Meeting held February 24, 2015, as written. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16933

### **COMMENT PERIOD**

Upon inquiry by Mayor Bigelow there was no one in attendance desiring to address the City Council during the comment period.

16934

### **PUBLIC HEARING, ACCEPT PUBLIC INPUT REGARDING APPLICATION NO. S-2-2015, FILED BY PERRY HOMES, REQUESTING FINAL PLAT APPROVAL FOR DIAMOND SUMMIT UNIT 15C – LOTS 1501-1503 AMENDED LOCATED AT 6472 SOUTH MOUNT ADAMS DRIVE**

Mayor Bigelow informed a public hearing had been advertised in order for the City Council to hear and consider public input regarding Application No. S-2-2015, filed by Perry Homes, requesting final plat approval for Diamond Summit Unit 15C – Lots 15-01-1503 Amended, located at 6472 South Mount Adams Drive.

Mayor Bigelow presented proposed Ordinance No. 15-10 related to the application to be considered after the public hearing, as follows:



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Application No. S-2-2015, filed by Perry Homes, and proposed Ordinance No. 15-10 would amend Lots 15-01-15-03 of the Diamond Summit Unit 15C Subdivision.

The purpose for the requested amendment would be to adjust mutual property lines between each lot. The Diamond Summit Unit 15C Subdivision had been recorded with the Salt Lake County Recorder's Office in January of 2014. Prior to recording the subdivision plat, Perry Homes wanted to begin the installation of the public improvements, which was not an uncommon practice, but the developer needed to have construction drawings approved including the appropriate City inspections.

Once installation of the curb and gutter were completed, the developer's surveyor would install pins in the top of the curb to delineate the side property lines of each lot. Unfortunately, the location of the pins placed in the curb had been based on an earlier version of the subdivision plat. As a result, the property line between Lots 1501 and 1502 was off by approximately four feet.

The owner of Lot 1501 had purchased his lot based on the recorded subdivision that was correct. However, because of the pin placement, he was under the impression he had additional property to install an RV pad. Rather than go back to the owner of Lot 1501 to have him reconfigure his site layout, Perry Homes wanted to explore other options to resolve the situation.

City staff had met with Perry Homes and the engineering firm that installed the pins and the solution that seemed to work for all involved, including the future owner of Lot 1502, would be to amend the subdivision plat by shifting the property line to accommodate the existing improvements on Lot 1501 and the pending new home on Lot 1502. However, shifting the property line to the south would also impact Lot 1503 that was owned by the City. This lot had been acquired by the City to provide a trail connection with the Mountain View Corridor trail system.

Any alteration to Lot 1503 would need to be coordinated with the City's Parks and Recreation Department. Perry Homes had contacted the Parks and Recreation Department Director to discuss an agreement.

In consideration of the City's willingness to allow the amended plat, Perry Homes had agreed to the following:

1. Remove all rock and other debris from the property
2. Grade the property in accordance with the City's Parks and Recreation Department plans for the site

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3. Install a 10-foot wide concrete walkway from the sidewalk to the Mountain View Corridor trail system
4. Install a drive approach to allow easier access for pedestrians or those using strollers to access the trail

The Parks and Recreation Department believed these items would more than adequately cover any costs associated with the loss of approximately 400 square feet of park space. Perry Homes and the Parks and Recreation Department had agreed on the proposal and improvements would be installed at such time as the City deemed appropriate.

In summary, the application would adjust the mutual property lines between Lots 1501-1503 and the existing utility easements would be adjusted to follow the new property lines.

Mayor Bigelow opened the public hearing.

Jeff Taylor, Perry Homes, addressed the City Council. Mr. Taylor expressed appreciation for the Council's consideration of his application.

There being no one else to speak either in favor or in opposition, Mayor Bigelow closed the public hearing.

**ACTION: CONSIDER ORDINANCE NO. 15-10, APPROVING THE AMENDMENT OF LOTS 1501-1503 OF THE DIAMOND SUMMIT UNIT 15C SUBDIVISION**

The City Council previously held a public hearing regarding Application No. S-2-2015, filed by Perry Homes, and considered proposed Ordinance No. 15-10 that would approve the amendment of Lots 1501-1503 of the Diamond Summit Unit 15C Subdivision.

After discussion, Councilmember Vincent moved to approve Ordinance No. 15-10, an Ordinance Approving the Amendment of Lots 15-01-15-03 of the Diamond Summit Unit 15C Subdivision.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

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16935      **RESOLUTION NO. 15-44, AWARD CONTRACT TO FX CONSTRUCTION FOR THE RITER CANAL DETENTION STRUCTURE PROJECT**

Mayor Bigelow presented proposed Resolution No. 15-44 that would award a contract to FX Construction, in an amount not to exceed \$211,000.00, for the Riter Canal Detention Structure Project.

Bids had been solicited and 12 bids received regarding the Riter Canal Detention Structure Project, as follows:

FX Construction:	\$192,000.00
ACME:	\$207,900.00
Bowen Construction:	\$251,559.00
Lyndon Jones:	\$276,000.00
Whitaker Construction:	\$346,450.00
Cottonwood Builders:	\$354,209.00
STAPP Construction:	\$370,000.00
Patriot Construction:	\$372,449.00
J. Lyne Roberts & Sons Inc:	\$378,995.00
Absolute Constructors:	\$392,210.05
Beck Construction:	\$425,000.00
Gerber Construction:	\$475,750.00

A substantial portion of the west end of the City drained to the Riter Canal, a channel that conveyed process water to Kennecott, and a Salt Lake County maintained flood control facility. In order to address the impact of a developing city, property had been acquired onto which floodwaters could be attenuated during storm events. The subject contract would provide for construction of the canal control structure designed to restrict the canal outflow to an allowed amount. This structure minimized downstream flooding potential and had been required by Kennecott and Salt Lake County Flood Control in order to obtain permits to continue to increase runoff into the canal from new developments.

After discussion, Councilmember Huynh moved to approve Resolution No. 15-44, a Resolution Awarding a Contract to FX Construction for the Riter Canal Detention Structure Project. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Nordfelt	Yes

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Mayor Bigelow                      Yes

Unanimous.

**16936                      RESOLUTION NO. 15-45, ACCEPT A GRANT OF TEMPORARY  
CONSTRUCTION EASEMENT FROM BAILEY LOT LEASING, LC,  
FOR PROPERTY LOCATED AT 2602 SOUTH 3270 WEST**

Mayor Bigelow presented Resolution No. 15-45 that would accept a Grant of Temporary Construction Easement from Bailey Lot Leasing, LC, for property located at 2602 South 3270 West.

Bailey Lot Leasing, LC, a Utah Limited Liability Company, had signed the Grant of Temporary Construction Easement regarding its property (Parcel 156-20-477,007).

In August of 2014, Bailey Lot Leasing, L.C. had signed a Storm Drain Easement and a Grant of Temporary Construction Easement for the 2600 South Ditch Piping Project. The project had been delayed until the 2015 construction season and as the original document had expired a new Grant of Temporary Construction Easement was being required.

The Bailey Lot Leasing property was one of eight properties affected and benefitted by construction of the project. The project would pipe an existing open storm water ditch located on the west side of 3200 West at approximately 2600 South. The open ditch ran west from 3270 West approximately 600-feet to a storm drain clean-out box. The ditch ran along the rear property lines of properties located on either side of the ditch. This ditch was the last open section of the storm drain system that handled storm water from properties located between 3200 West and 3600 West, and between Parkway Boulevard and the SR-201 South Frontage Road.

After discussion, Councilmember Lang moved to approve Resolution No. 15-45, a Resolution Authorizing the City to Accept a Grant of Temporary Construction Easement from Bailey Lot Leasing, LC, for Property Located at 2602 South 3270 West. Councilmember Nordfelt seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

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Unanimous.

16937

**APPLICATION NO. S-1-2015, FILED BY NATOMAS MEADOWS LLC, REQUESTING FINAL PLAT APPROVAL FOR ARA INDUSTRIAL CENTER SUBDIVISION – PHASE 1, LOCATED AT 2450 SOUTH 6755 WEST**

Mayor Bigelow presented Application No. S-1-2015, filed by Natomas Meadows LLC, requesting final plat approval for ARA Industrial Center Subdivision – Phase 1, located at 2450 South 6755 West.

Corbin Bennion, representing Natomas Meadows LLC, had requested approval for the first phase of the ARA Industrial Center Subdivision. The subject property was located immediately to the west of Freeport West Phase 1 and zoned Manufacturing.

The proposed subdivision would consist of two lots and along with division to create those lots a parcel was also being shown on the subdivision plat representing property to eventually be dedicated as future right-of-way for 2540 South. However, it was not yet known what the alignment of that road would be so this parcel had been created as a placeholder until those decisions were made in the future.

The primary access to the subdivision would be gained from 6755 West. This road connected with the SR-201 Frontage Road and 2540 South that then connected to 6400 West. Although an access point would come off of SR-201 to the west of this lot, the primary access for this lot would be from 6755 West.

The extension of 2540 South would occur as property to the west developed. The cross section to be used, as well as future rights-of-way within the development site, would be 66-feet. A parkstrip and sidewalk would be located on one side of the roadway that was standard in the Manufacturing zone.

The City had completed work with the installation of curb and gutter along the south side of the SR-201 Frontage Road. In addition to these improvements, the overhead power lines had been placed underground in a 10-foot public utility easement. The developer would be responsible for landscaping and site improvements that would be reviewed as part of the conditional use process.

After discussion, Councilmember Lang moved to approve Application No. S-1-2015, filed by Natomas Meadows LLC, and give final plat approval for ARA Industrial Center Subdivision – Phase 1, located at 2450 South 6755 West. Councilmember Vincent seconded the motion.

A roll call vote was taken:

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Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16938

**APPLICATION NO. PUD-1-2014 FILED BY OAKWOOD HOMES (FORMERLY HENRY WALKER HOMES) REQUESTING FINAL PLAT APPROVAL FOR VILLAGES AT WESTRIDGE PHASE 3 LOCATED AT 5200 SOUTH 5600 WEST**

Mayor Bigelow presented Application No. PUD-1-2014, filed by Oakwood Homes, requesting final plat approval for Villages at Westridge Phase 3 located at 5200 South 5600 West.

The third phase of Villages at Westridge would consist of 34 residential units on 4.6 acres. Oakwood Homes of Utah, formerly Henry Walker Homes, had submitted the application. Previously a modified Development Agreement had been approved to address the architectural style of units to be constructed in Phases 2 and 3.

Access to the development would be gained from Summer Ridge Drive and from a stub street in Phase 2 to the south. Recordation of the plat would provide street connection from the Villages at Westridge development to the Westridge Estates Subdivision to the north.

Housing for this phase of the development would be three and four-plex townhome units. These units had been designed to look like a large single-family dwelling. Elevations would have one main entry on the front of the building with other entrances being located on the side of the building and/or a side entrance at the front of the building. Based on the footprint of the structure there was an abundance of relief and building movement with covered porches and popouts.

Proposed square footage ranged from 2,143 to 2,211 square feet and all units would have three bedrooms which addressed concerns previously expressed by the City Council. The third bedroom allowed a growing family to stay longer in their home thus prolonging their stay in the community. Per the development agreement, buildings would consist of 100% masonry products.

General Parking requirement for all residential development in the City was two spaces per unit. In the subject development, all residential units would have a two-car garage for parking. In addition, there would be 22 guest spaces that

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equated to an overall parking ratio of 2.35 spaces per unit. On-street parking would be available along Lake Ridge Drive and Summer Ridge Drive as well.

As part of the overall development, 51% of the project site would be open space. In this phase, the developer would deed an area approximately 1.3 acres in size for use as a City park. The park location was in the northwest corner of the overall development. During the planning stages for Westridge Estates Phase 5 to the west, a parcel had been reserved to provide access into the future park.

As per the development agreement, fencing would be installed along the north and east sides of this project. The north side would consist of vinyl fencing while the east side adjacent to 5600 West would be pre-cast concrete. The masonry wall would need to match the wall installed by Ivory Homes as part of the Westridge Estates Subdivision.

The developer would create a Homeowner's Association (HOA) for the entire project. The association would be responsible to hire a property management company. As per previous PUD applications City staff would recommend that prior to this development being turned over to the association, a meeting with City staff, the developer and the management company take place to provide an opportunity to ensure all development standards and improvements had been completed in accordance with the City's approval of the project.

After discussion, Councilmember Vincent moved to approve Application No. PUD-1-2014, filed by Oakwood Homes, and give final plat approval for Villages at Westridge Phase 3, located at 5200 South 5600 West. Councilmember Huynh seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY CITY COUNCIL, THE REGULAR MEETING OF TUESDAY, MARCH 10, 2015, WAS ADJOURNED AT 6:43 P.M., BY MAYOR BIGELOW.



**MINUTES OF COUNCIL REGULAR MEETING - MARCH 10, 2015**

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I hereby certify the foregoing to be a true, accurate and complete record of the proceedings of the Regular Meeting of the West Valley City Council held Tuesday, March 10, 2015.

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Sheri McKendrick, MMC  
City Recorder

**WEST VALLEY CITY, UTAH**

**A PROCLAMATION RECOGNIZING APRIL 2015 AS  
CHILD ABUSE PREVENTION MONTH.**

**WHEREAS**, West Valley City's greatest asset is our children. All children deserve to grow up in a safe and nurturing environment to assure they reach their full potential; and

**WHEREAS**, child abuse is a serious problem affecting over 3,725 in the Salt Lake Valley annually; and

**WHEREAS**, child abuse respects no racial, religious, socio-economic or geographic boundaries; and

**WHEREAS**, all citizens of West Valley City should become more aware of child abuse and its prevention within their respective communities and to actively encourage and support parents to raise their children in a safe and nurturing environment; and

**WHEREAS**, decreasing the occurrence of child abuse depends upon the efforts of each of us, in order to make a positive, substantial impact on the children of today who will grow to be the leaders of tomorrow.

**NOW, THEREFORE**, we, the Mayor and City Council of West Valley City, Utah, do hereby proclaim April 2015 as Child Abuse Prevention Month in West Valley City and call upon our citizens to become aware of the impact of child abuse and join in working for its prevention within our communities.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

WEST VALLEY CITY

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

**WEST VALLEY CITY, UTAH**

**A PROCLAMATION RECOGNIZING APRIL 7, 2015 AS  
NATIONAL SERVICE RECOGNITION DAY.**

**WHEREAS**, service to others is a hallmark of the American character, and central to how we meet our challenges; and

**WHEREAS**, the nation's mayors are increasingly turning to national service and volunteerism as a cost-effective strategy to meet city needs; and,

**WHEREAS**, participants in AmeriCorps and Senior Corps address the most pressing challenges facing our cities and nation, from educating students for the jobs of the 21st century and supporting veterans and military families to providing health services and helping communities recover from natural disasters; and

**WHEREAS**, national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and

**WHEREAS**, AmeriCorps and Senior Corps participants serve in more than 60,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our economic and social well-being; and

**WHEREAS**, many national service participants of all ages and backgrounds serve in West Valley City, providing vital support to City residents and improving the quality of life in our City; and

**WHEREAS**, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and,

**WHEREAS**, national service participants demonstrate commitment, dedication, and patriotism by making an intensive commitment to service, a commitment that remains with them in their future endeavors; and

**WHEREAS**, the Corporation for National and Community Service shares a priority with mayors nationwide to engage citizens, improve lives, and strengthen communities; and is joining with the National League of Cities, City of Service, and mayors across the country to recognize the impact of service on Mayors Day of Recognition for National Service on April 7, 2015.

**NOW THEREFORE, BE IT RESOLVED** that we, Mayor Ron Bigelow and the City Council of West Valley City, do hereby proclaim April 7, 2015, as National Service Recognition Day, and encourage residents to recognize the positive impact of national service in our City and thank those who serve, and to find ways to give back to their communities.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

WEST VALLEY CITY

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

*The comment period is limited to 30 minutes. Any person wishing to comment shall limit their comments to five minutes. Any person wishing to comment during the comment period shall request recognition by the Mayor. Upon recognition, the citizen shall approach the microphone. All comments shall be directed to the Mayor. No person addressing the City Council during the comment period shall be allowed to comment more than once during that comment period. Speakers should not expect any debate with the Mayor, City Council or City Staff; however, the Mayor, City Council or City Staff may respond within the 30-minute period.*

ITEM #: \_\_\_\_\_  
Fiscal Impact: \_\_\_\_\_  
Funding Source: \_\_\_\_\_  
Account #: \_\_\_\_\_  
Budget Opening Required: \_\_\_\_\_

**ISSUE:**

SV-1-2015     John Henry Drive – Street Vacation (2365 South 2570 West)

**SYNOPSIS:**

Proposal:       Vacate all of John Henry Drive

**BACKGROUND:**

The West Valley City Community & Economic Development Department is requesting a street vacation for all of John Henry Drive. This street is located at 2365 South 2570 West.

John Henry Drive was dedicated by the Cache Valley Electric Company in 1996. The purpose for the dedication was to provide access for what would be a new building site and to provide a potential connection with undeveloped property to the north of the Brighton North Point Canal. The right-of-way was located entirely on property owned by Cache Valley Electric.

The street has existed as it was dedicated since 1996. Property to the north has since developed and did not require access from John Henry Drive. The City recently learned that Cache Valley Electric is proposing to leave West Valley City. Rather than allow a prime industrial property to sit vacant, the City's Economic Development Division has worked to secure a new owner, which is CCI Mechanical.

As part of the negotiations with CCI Mechanical to make this site more attractive and secure for their business operations, they inquired as to the possibility of vacating John Henry Drive. The City explained the process and discussed various reasons why the vacation makes sense. These are listed below:

1. The existing road dead-ends without an approved turnaround.
2. Property to the north has developed without the need for secondary access.
3. Property within the vacated right-of-way could be incorporated into a revised site plan.
4. Property within the vacated right-of-way would be put back on the tax rolls.
5. The Cache Valley Electric site is the only property that is utilizing this street.

Typically, when a street is vacated, half of the right-of-way would go to each adjacent property owner. However, in this case, Cache Valley Electric deeded the entire right-of-way for John Henry Drive. As a result, the entire right-of-way will go back to Cache Valley Electric, or their successors in interest.

As part of the application, the City sends out notices regarding the application. One such recipient of this notice is the State of Utah. The State owns property immediately to the west of John Henry Drive. Staff received a call from the Real Estate Manager inquiring about the vacation.

A concern was expressed that although the State does not presently use John Henry Drive, there may be redevelopment plans in the future that could benefit from this road if it was allowed to remain a dedicated right-of-way. Subsequent to our discussion, a letter was submitted by the State expressing their desire to keep this road open. (See attached letter)

Staff explained the reasoning behind the proposed vacation and stated that their site presently has access from 2365 South. A suggestion was made that the State could also reach out to the new property owner to see if a portion of what will be vacated could be jointly used between the two parties. This would be a perpetual access easement that could be maintained in common if agreed by both parties.

**RECOMMENDATION:**

The Planning Commission voted to approve the street vacation.

**SUBMITTED BY:**

Steve Lehman, Current Planning Manager

**WEST VALLEY CITY, UTAH**

**ORDINANCE NO. \_\_\_\_\_**

Draft Date: \_\_\_\_\_  
Date Adopted: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

**AN ORDINANCE VACATING ALL OF JOHN HENRY DRIVE IN  
WEST VALLEY CITY UTAH.**

**WHEREAS**, the City has submitted petition SV-1-2015, proposing a street vacation to all of John Henry Drive; and

**WHEREAS**, the purpose for the vacation is to facilitate the redevelopment of the Cache Valley Electric property; and

**WHEREAS**, proper notice was given and a public hearing was held pursuant to Section 10-9a-207, Utah Code Annotated; and

**WHEREAS**, the City Council finds that after the public hearing, that there is good cause for the street vacation, and that neither the public nor any person will be materially injured by the proposed vacation and that the approval is in the best interest of the health, safety and welfare of the citizens of West Valley City; and

**NOW THEREFORE, BE IT ORDAINED** by the City Council of West Valley City, State of Utah, as follows:

- Section 1.** That the street vacation for all of John Henry Drive as shown in Petition SV-1-2015 and located at 2365 South 2570 West in West Valley City, is hereby approved.
- Section 2.** This Ordinance shall have no force or effect on any rights-of-way or easements of any lot owner, and the franchise rights of any public utilities shall not be impaired thereby, nor shall it have any force or effect on any holders of existing franchises, water drainage pipelines, or other such uses as they may presently exist under, over or upon said property or as are or may be shown on the official plats and records of Salt Lake County.
- Section 3.** The City Recorder is hereby directed to record this Ordinance with the Salt Lake County Recorder's Office.
- Section 4.** This Ordinance shall become effective immediately upon posting as required by law.



PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

WEST VALLEY CITY

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

## **SV-1-2015**

### **John Henry Drive – Street Vacation (2570 West)**

#### **BACKGROUND**

West Valley City is requesting a street vacation for all of John Henry Drive. This street is located at 2365 South 2570 West.

John Henry Drive was dedicated by the Cache Valley Electric Company in 1996. The purpose for the dedication was to provide access for what would be a new building site and to provide a potential connection with undeveloped property to the north of the Brighton North Point Canal. The right-of-way was located entirely on property owned by Cache Valley Electric.

The street has existed as it was dedicated since 1996. Property to the north has since developed and did not require access from John Henry Drive. The City recently learned that Cache Valley Electric is proposing to leave West Valley City. Rather than allow a prime industrial property to sit vacant, the City's Economic Development Division has worked to secure a new owner, which is CCI Mechanical.

As part of the negotiations with CCI Mechanical to make this site more attractive and secure for their business operations, they inquired as to the possibility of vacating John Henry Drive. The City explained the process and discussed various reasons why the vacation makes sense. These are listed below:

1. The existing road dead-ends without an approved turnaround.
2. Property to the north has developed without the need for secondary access.
3. Property within the vacated right-of-way could be incorporated into a revised site plan.
4. Property within the vacated right-of-way would be put back on the tax rolls.
5. The Cache Valley Electric site is the only property that is utilizing this street.

Typically, when a street is vacated, half of the right-of-way would go to each adjacent property owner. However, in this case, Cache Valley Electric deeded the entire right-of-way for John Henry Drive. As a result, the entire right-of-way will go back to Cache Valley Electric, or their successors in interest.

As part of the application, the City sends out notices regarding the application. One such recipient of this notice is the State of Utah. The State owns property immediately to the west of John Henry Drive. Staff received a call from the Real Estate Manager inquiring about the vacation.

A concern was expressed that although the State does not presently use John Henry Drive, there may be redevelopment plans in the future that could benefit from this road if it was allowed to remain a dedicated right-of-way. Subsequent to our discussion, a letter was submitted by the State expressing their desire to keep this road open. (See attached letter)

Staff explained the reasoning behind the proposed vacation and stated that their site presently has access from 2365 South. A suggestion was made that the State could also reach out to the new property owner to see if a portion of what will be vacated could be jointly used between the two parties. This would be a perpetual access easement that could be maintained in common if agreed by both parties.

According to City ordinance, street vacations shall be reviewed by the Planning Commission with a recommendation to the City Council.

### **RECOMMENDATION**

Approval of the street vacation as submitted.

Continue the application due to issues raised at the public hearing.

#### **Applicant:**

Davis Mulholland  
758 S Redwood Road

#### **Opposed:**

Lee Fairbourne  
State of Utah

#### **Favored:**

Jeff Jackson  
West Valley City RDA

**Discussion:** Steve Lehman presented the application. Terri Mills asked what type of fencing currently exists between the two properties. Steve replied that it is chain-link.

Lee Fairbourne, representing the State of Utah, stated that the State is concerned about potential access issues with their facility if the site redevelops in the future. Jack Matheson asked how many people currently work at the facility. Mr. Fairbourne replied that he isn't sure but indicated that it is a correctional facility for people on parole and is minimum security. Commissioner Matheson stated that it doesn't seem like there would be a lot of traffic on the property and a secondary access doesn't sound necessary. Terri Mills stated that the site looks built out and questioned if a demolition could take place in the future if the site redevelops. Mr. Fairbourne replied it is a possibility.

Jeff Jackson, representing West Valley City RDA, stated that the facility was built prior to John Henry drive being constructed and it was built without anticipation of this access. Mr. Jackson indicated that the City worked closely with CCI Mechanical to relocate to this site after Cache Valley decided to leave the City. He stated that CCI Mechanical felt comfortable with the site under the assumption that John Henry Drive could be vacated. Mr. Jackson stated that the State facility treats sex offenders and CCI Mechanical wants to ensure the safety of its employees who will work at various times through the day and night.

Davis Mulholland, representing CCI Mechanical, stated that his business has been operating out of Salt Lake City for 52 years and he is looking forward to relocating in West Valley City. He indicated that the vacation of the road will allow more flexibility in adding

additional office space in the future since setbacks for additions would be an issue. Mr. Mulholland stated that there are over 100 employees that work in the office that include mechanical engineers and administrative staff.

West Valley City Planning Commission  
February 11, 2015  
Page 7

He added that the warehouse portion of the building will have 400 to 500 employees that operate under a union. Barbara Thomas asked if fencing will be installed on the west end. Mr. Mulholland replied that he may add a decorative fence but plans haven't been worked out completely at this point. Chairman Thomas asked if the applicant is open to working with the State on providing access. Mr. Mulholland replied yes and indicated that he wants to ensure secure access to his property but is open to looking at ideas to see if something can be worked out.

Chairman Thomas asked if parolee's stay at the facility. Mr. Fairbourne replied that there are 60 beds but indicated that he is unsure of duration of stay. He stated that it is low level security and there are mental health and rehabilitation programs.

Harold Woodruff stated that he sees how John Henry Drive could be beneficial to the State facility but added that the property was originally owned by Cache Valley and it makes sense to allow the new property owner to regain it back. Jack Matheson agreed and indicated that CCI Mechanical should be allowed to secure their access and decide what to do with the vacated street.

**Motion:** Commissioner Fuller moved for approval.

Commissioner Matheson seconded the motion.

**Roll call vote:**

Commissioner Fuller	Yes
Commissioner Matheson	Yes
Commissioner Meaders	Yes
Commissioner Mills	Yes
Commissioner Tupou	Yes
Commissioner Woodruff	Yes
Chairman Thomas	Yes

**Unanimous-SV-1-2015- Approved**



State of Utah

GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lt. Governor*

Department of Administrative Services

KIMBERLY K. HOOD  
*Executive Director*

Division of Facilities Construction and Management

BRUCE WHITTINGTON  
*Interim Director*

February 6, 2015

Mr. Steve Lehman  
Current Planning Manager  
West Valley City  
3600 Constitution Blvd.  
West Valley City, UT 84119

Re: Oppose street vacation of John Henry Drive

Dear Mr. Steve Lehman:

The State of Utah, Department of Administrative Services opposes the street vacation for John Henry Drive located at approximately 2365 South and 2570 West. The State of Utah is the property owner of the 2.12 acre parcel, APN 1521255003, located at 2588 W. 2365 South. The State's property is directly west and contiguous to the public road John Henry Drive.

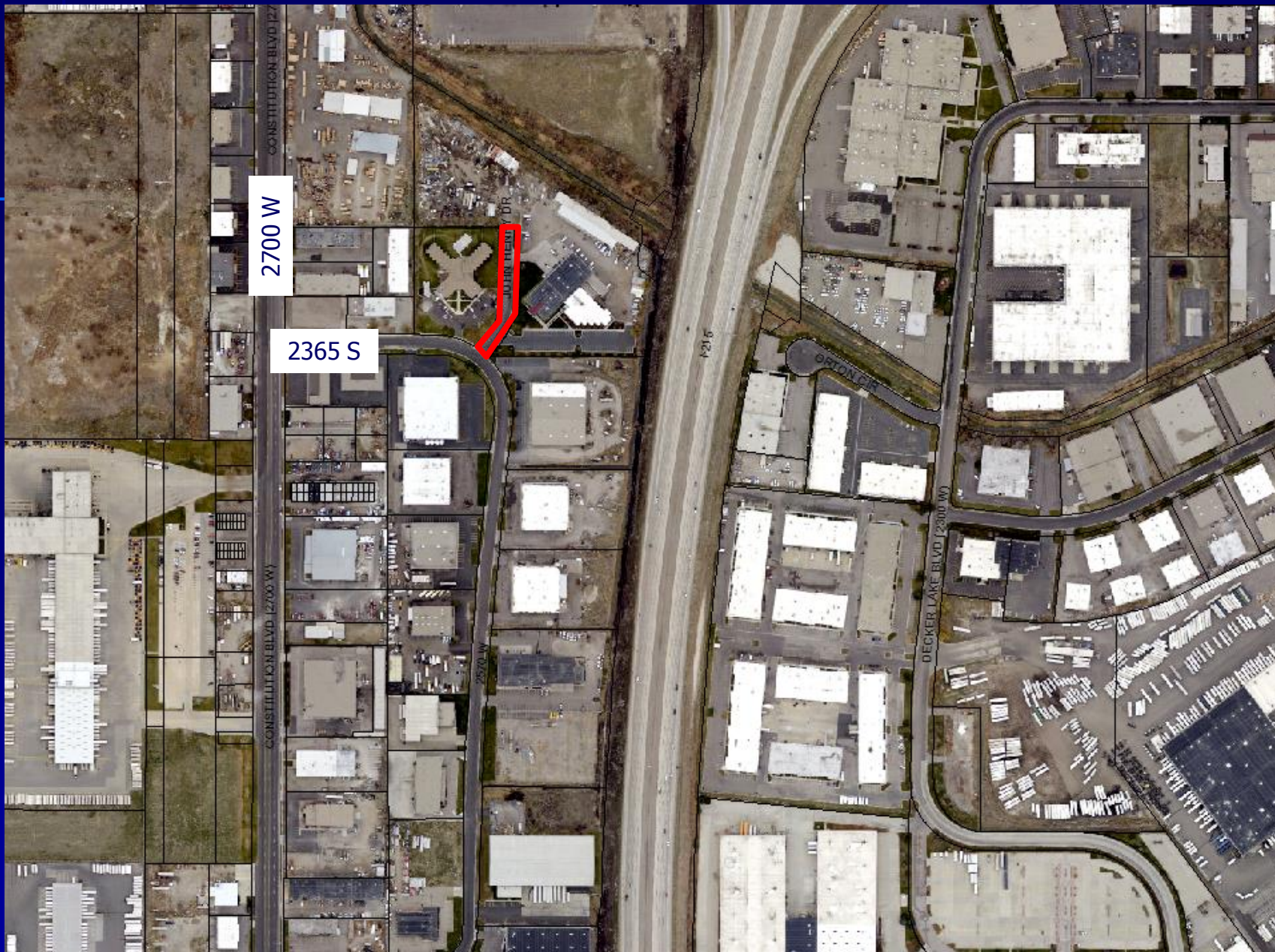
John Henry Drive provides immediate access to the back of the property for emergency needs and would allow a preferred access to the State's property in future development of the property.

We oppose the street vacation and request that John Henry Drive remain as a public street in West Valley City.

Regards,

Lee Fairbourn, CCIM  
Real Estate and Debt Manager

**SV-1-2015** Petition by **WEST VALLEY CITY** requesting a **vacation** of John Henry Drive. The location of this street is approximately 2365 S 2570 W. (Staff- **Steve Lehman** at 801-963-3311)







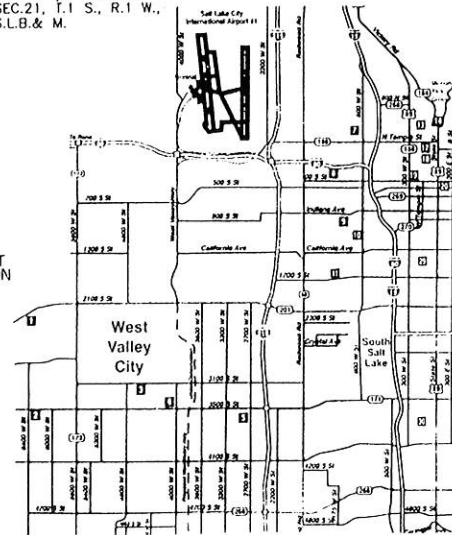


CONSTITUTION BOULEVARD (2700 WEST)

(N 00°04'22" W 2674.34 A.P.) N 00°04'22" W 2675.43 BASIS OF BEARINGS  
2341.01

NORTH 1/4 CORNER  
SEC. 21, T.1 S., R.1 W.,  
S.L.B. & M.

PROJECT  
LOCATION



VICINITY MAP

STATE OF UTAH, DEPARTMENT OF ADMINISTRATIVE  
SERVICES BOOK 5915, PAGE 1254

CACHE VALLEY ELECTRIC COMPANY

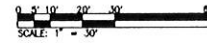
JOHN HENRY DRIVE  
(2570 WEST STREET)

N 00°04'22" W 238.59'

N 00°04'22" W 238.59'

S 00°04'22" E 238.59'

N 89°55'38" E 50.00'



LEGEND

- STREET MONUMENT (EXISTING)
- STREET MONUMENT (TO BE SET)
- PROPERTY MONUMENT (AS NOTED)
- SET 5/8" x 24" REBAR WITH YELLOW PLASTIC CAP STAMPED "LARSSEN & MALMQUIST"
- SET NAIL AND 3/4" BRASS WASHER STAMPED "L AND M"
- SET RIVET
- PROPERTY LINE
- MONUMENT / CENTER LINE
- FENCE LINE

$\Delta = 38^\circ 30' 24''$   
 $R = 150.00'$   
 $L = 100.81'$

$\Delta = 38^\circ 30' 24''$   
 $R = 200.00'$   
 $L = 134.41'$

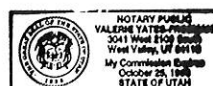
$\Delta = 11^\circ 33' 21''$   
 $R = 248.33'$   
 $L = 50.09'$

CENTER SEC. 21, T.1 S.,  
R.1 W., S.L.B. & M.



**LARSEN & MALMQUIST, INC.**  
CONSULTING ENGINEERS AND LAND SURVEYORS  
2734 SOUTH 2700 WEST WEST VALLEY CITY, UTAH 84119  
PHONE: (801) 972-2634 FAX: (801) 972-2696

JOB No. 03110-955



ACKNOWLEDGMENT  
STATE OF UTAH } S.S.  
COUNTY OF Salt Lake  
ON THE 12th DAY OF October, 19 95 PERSONALLY  
APPEARED BEFORE ME Jack I. Laub

WHO BEING BY ME DULY SWORN OR AFFIRMED, DID SAY THAT he  
IS/ARE THE President  
OF Cache Valley Electric  
AND THAT THE WITHIN OWNER'S  
DEDICATION WAS SIGNED IN BEHALF OF SAID Corporation  
Jack I. Laub BY AUTHORITY OF same  
AND THE SAID president

ACKNOWLEDGED TO ME THAT SAID dedication

EXECUTED THE SAME.

MY COMMISSION EXPIRES 10-25-98  
NOTARY PUBLIC  
RESIDING IN Salt Lake City

APPROVAL AS TO FORM  
APPROVED AS TO FORM THIS 8th  
DAY OF August, A.D.,  
19 95  
WEST VALLEY CITY COUNCIL  
PRESENTED TO WEST VALLEY CITY COUNCIL  
THIS 8th DAY OF  
A.D., 19 95, AT WHICH TIME THIS SUBDIVISION WAS  
APPROVED AND ACCEPTED.

ATTEST: CITY RECORDER CITY MANAGER

SURVEYOR'S CERTIFICATE

I, M. CARL LARSEN do hereby certify that I am a  
Registered Land Surveyor, and that I hold certificate  
No. 142765 as prescribed under the laws of the  
State of Utah. I further certify that by authority of the Owners,  
I have made a survey of the tract of land shown on this plat  
and described below, and have divided said tract of land into a  
public street, hereafter to be known as

JOHN HENRY DRIVE

and that same has been correctly surveyed and staked on the  
ground as shown on this plat.

BOUNDARY DESCRIPTION

COURSE	DIST.	REMARKS
		BEGINNING AT A POINT ON THE NORTH RIGHT OF WAY LINE OF POLE LINE ROAD SAID POINT BEING NORTH 00°04'22" WEST ALONG THE SECTION LINE 295.44 FEET AND SOUTH 89°53'21" EAST 649.59 FEET FROM THE CENTER OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN RUNNING THENCE
N38°26'02"E	60.89	FEET TO A POINT OF CURVATURE TO THE LEFT (THE RADIUS POINT OF WHICH BEARS NORTH 51°33'58" WEST 150.00 FEET) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 100.81 FEET TO A POINT OF TANGENCY; THENCE
N00°04'22"W	238.59	FEET; THENCE
N89°55'38"E	50.00	FEET; THENCE
S00°04'22"E	238.59	FEET TO A POINT OF CURVATURE TO THE RIGHT (THE RADIUS POINT OF WHICH BEARS SOUTH 89°55'38" WEST 200.00 FEET) THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 134.41 FEET TO A POINT OF TANGENCY; THENCE
S38°26'02"W	60.89	FEET TO A POINT ON A CURVE TO THE LEFT (THE RADIUS POINT OF WHICH BEARS SOUTH 44°12'45" WEST 248.33 FEET) SAID POINT BEING ON THE NORTHEASTLY RIGHT OF WAY LINE OF POLE LINE ROAD, THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID NORTHEASTLY RIGHT OF WAY LINE 50.09 FEET TO THE POINT OF BEGINNING.
		CONTAINS 0.478 ACRES.

DATE 9/21/95 M. Carl Larsen  
DATE

OWNER'S DEDICATION

Know all men by these presents that the undersigned  
owner ( ) of the above described tract of land, having caused  
same to be dedicated as a public street to be hereafter  
known as

JOHN HENRY DRIVE

do hereby dedicate for perpetual use of the public all parcels of  
land shown on this plat as intended for Public use.

In witness whereof I have hereunto set my HAND this  
25th day of October, A.D., 19 95

Jack I. Laub  
CACHE VALLEY ELECTRIC COMPANY  
JACK I. LAUB, PRESIDENT

INDIVIDUAL  
ACKNOWLEDGMENT

STATE OF UTAH } S.S.  
County of Salt Lake }

On the 25th day of October, A.D., 19 95, personally appeared before  
me, the undersigned Notary Public, in and for said County of Salt Lake  
in said State of Utah, the signer ( ) of the above Owner's dedication,  
in number, who duly acknowledged to me that he  
signed it freely and voluntarily and for the uses and purposes therein  
mentioned.

MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC  
RESIDING IN SALT LAKE COUNTY

JOHN HENRY DRIVE

LOCATED IN THE NORTHEAST QUARTER OF SECTION 21,  
TOWNSHIP 1 SOUTH, RANGE 1 WEST  
SALT LAKE BASE AND MERIDIAN, WEST VALLEY CITY, UTAH

RECORDED #

STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND  
FILED AT THE REQUEST OF

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ BOOK: \_\_\_\_\_ PAGE: \_\_\_\_\_

FFF \$ SALT LAKE COUNTY RECORDER

NUMBER \_\_\_\_\_  
ACCOUNT \_\_\_\_\_  
SHEET \_\_\_\_\_  
OF \_\_\_\_\_ SHEETS

PLANNING COMMISSION

APPROVED THIS 6th DAY OF  
March, A.D., 19 96, BY THE WEST  
VALLEY CITY PLANNING COMMISSION.  
David W. Woodbury  
CHAIRMAN, WEST VALLEY CITY

BOARD OF HEALTH

APPROVED THIS \_\_\_\_\_ DAY OF  
OF \_\_\_\_\_ A.D., 19 \_\_\_\_\_  
DIRECTOR, S. L. CO.

GRANGER HUNTER  
IMPROVEMENT DISTRICT

APPROVED THIS 2nd DAY OF April,  
OF \_\_\_\_\_ A.D., 19 96  
Frederick W. Hunter  
DISTRICT ENGINEER

CITY ENGINEER

APPROVED THIS 29th DAY OF  
OF April, A.D., 19 96  
John C. Schmitt  
WEST VALLEY CITY ENGINEER

APPROVAL AS TO FORM

APPROVED AS TO FORM THIS 8th  
DAY OF August, A.D.,  
19 95  
Ellen R. Parnell  
ATTORNEY

WEST VALLEY CITY COUNCIL

PRESENTED TO WEST VALLEY CITY COUNCIL  
THIS \_\_\_\_\_ DAY OF  
A.D., 19 \_\_\_\_\_, AT WHICH TIME THIS SUBDIVISION WAS  
APPROVED AND ACCEPTED.



Item #:	_____
Fiscal Impact:	\$50,000 + _____
Funding Source:	_____
Account #:	_____
Budget Opening Required:	No _____

**ISSUE:**

A resolution approving a telecommunications network agreement with ExteNet Systems, Inc., for the design, installation and operation of a Distributed Network within the Maverik Center.

**SYNOPSIS:**

ExteNet desires to install a wireless network within the Maverik Center. This network will be utilized by various wireless providers to enhance wireless service within the Maverik Center. ExteNet will provide lump sum payments for every provider they sign up.

**BACKGROUND:**

ExteNet designs, constructs and operates outdoor and indoor distributed antenna networks, which provide for the distribution and propagation of wireless telecommunications frequencies. ExteNet wishes to install an antenna system within the Maverik Center building. In consideration for access, ExteNet will pay the City and Centennial a one-time fee of \$50,000. In addition, ExteNet will pay Centennial and the City an additional \$200,000 for each of the first and second provider of wireless services and an additional \$100,000 for each of the third and fourth provider of wireless services.

**RECOMMENDATION:**

City staff recommends approval of the resolution.

**SUBMITTED BY:**

J. Eric Bunderson, City Attorney

**WEST VALLEY CITY, UTAH**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER  
INTO AN AGREEMENT WITH EXTENET SYSTEMS, INC.  
AND THE CENTENNIAL MANAGEMENT GROUP, INC.  
FOR THE DESIGN, INSTALLATION AND OPERATION OF  
A DISTRIBUTED NETWORK AT THE MAVERIK CENTER.**

**WHEREAS**, ExteNet Systems, Inc., a Delaware corporation (herein “ExteNet”) wishes to design, install and operate a distributed network at the Maverik Center; and

**WHEREAS**, West Valley City (the “City”), by and through the Municipal Building Authority, is the owner of the Maverik Center; and

**WHEREAS**, Centennial Management, Inc. (“Centennial”) is the manager of the Maverik Center; and

**WHEREAS**, the City and Centennial wish to allow the design, installation and operation of the distributed network; and

**WHEREAS**, an Agreement has been prepared for execution by and between the City, Centennial and ExteNet entitled, “Telecommunications Network Agreement”, which sets forth the rights, duties, and obligations of each of the parties thereto; and

**WHEREAS**, the City Council of West Valley City, Utah, does hereby determine that it is in the best interest of the health, safety, and welfare of the citizens of West Valley City to approve the Agreement with Centennial and ExteNet;

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of West Valley City, Utah, that the Agreement entitled, “Telecommunications Network Agreement” is hereby approved and the Mayor is hereby authorized to execute said Agreement for and on behalf of West Valley City, subject to approval of the final form of the document by the City Manager and the City Attorney’s Office.

**PASSED, APPROVED, and MADE EFFECTIVE** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

WEST VALLEY CITY

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

## TELECOMMUNICATIONS NETWORK AGREEMENT

ExteNet Site Name: **Maverik Center**

ExteNet Site Identification Number: **NW-UT-MAVERIK-OPN**

This Telecommunications Network Agreement (this "**Agreement**") is entered into as of the latter signature date on page 15 below (the "**Effective Date**"), among ExteNet Systems, Inc., a Delaware corporation ("**ExteNet**"), West Valley City, a municipal corporation of the State of Utah ("**Owner**"), and Centennial Management Group, Inc., a Utah corporation ("**Manager**").

### BACKGROUND

- A. ExteNet designs, constructs and operates outdoor and indoor distributed antenna networks, which provide for the distribution and propagation of wireless telecommunications frequencies or spectrum of one or more wireless service providers, resulting in enhanced or improved coverage for such wireless service providers' customers in the areas served by the networks.
- B. Owner owns, through the West Valley City Building Authority, the building or buildings defined in Section 1.
- C. Manager operates and manages the building or buildings defined in Section 1 on behalf of the Owner pursuant to the terms of a Management Agreement between Manager's parent and Owner.
- D. Owner, Manager and ExteNet desire to enter into this Agreement to establish the terms and conditions whereby Owner and Manager will lease and grant related rights to ExteNet, under the supervision and management of the Manager, with respect to portions of the Building and related improvements in order for ExteNet to design, install and operate the Distributed Network (as defined below) at the Building.

### AGREEMENT

NOW, THEREFORE, in consideration of the Background set forth above, the Parties' mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner, Manager and ExteNet agree as follows:

1. **Key Terms.** For purposes of this Agreement, the following capitalized terms or information have the meanings set forth in this Section 1:

Contact Information		
ExteNet:		
	<b>Non-emergencies</b>	ExteNet Systems, Inc. 3030 Warrenville Road Suite 340 Lisle, Illinois 60532 Attn: Chief Financial Officer with a copy to the attention of the General Counsel (at the same address)
	<b>Emergencies</b>	ExteNet NOC Tel: (866) 892-5327 Email: <a href="mailto:noc@extenetsystems.com">noc@extenetsystems.com</a>
Owner/Manager:		
	<b>Non-emergencies</b>	Centennial Management Group 3200 S. Decker Lake Dr. West Valley City, Utah 84419 Attn: James Fuoco - Controller
	<b>Emergencies and Access</b>	Randy Mayne Tel: 801-824-3421 email: <a href="mailto:rmayne@maverikcenter.com">rmayne@maverikcenter.com</a>

<b>Building:</b>	The building generally known as “Maverik Center” and having a street address of 3200 South Decker Lake Drive, West Valley City, UT 84119.
<b>Coverage Area:</b>	Areas within the Building within which ExteNet intends to provide enhanced coverage for its Customers by means of the Distributed Network, which areas are generally described as follows: 90% of the total square feet of the interior areas of the Building that are habitable (excluding elevators and stairwells).

<b>Provisions Related to Term of Agreement</b>	
<b>Commencement Date:</b>	The earlier of (i) the date that ExteNet completes the installation of the ExteNet Equipment and such equipment is functional; and (ii) twelve months after the Effective Date.
<b>Expiration Date:</b>	The last day of the calendar month in which the tenth anniversary of the Commencement Date occurs, <u>provided however</u> , if the Commencement Date occurs on the first day of a calendar month, then the Expiration Date will be the day immediately preceding the tenth anniversary of the Commencement Date, but subject to extension for each effective Renewal Term.
<b>Initial Term:</b>	Ten (10) years, subject to adjustment as described in the Key Term “Expiration Date” and in <u>Section 7(a)</u> , commencing on the Commencement Date and expiring on the Expiration Date.
<b>Renewal Term:</b>	Each of the two (2) successive periods of five (5) years each.
<b>Term:</b>	Collectively, the Initial Term, along with each Renewal Term for which ExteNet has not given notice of its election not to renew, as further provided in <u>Section 7(b)</u> .

**2. General Definitions.** In addition to the terms otherwise defined in this Agreement, the following capitalized terms have the meanings set forth in this section:

(a) **Affiliate:** a corporation or entity which (i) directly or indirectly (through one or more subsidiaries) controls a Party; (ii) is controlled directly or indirectly (through one or more subsidiaries) by a Party; or (iii) is under the common control, directly or indirectly (through one or more subsidiaries) with a Party by the same parent corporation or entity.

(b) **Applicable Law:** all valid statutes, ordinances, laws, regulations and directives of any governmental body having jurisdiction thereof applicable to the Building, the Distributed Network or either of the Parties with respect to the subject matter of this Agreement.

(c) **Approved Plans:** the Plans and Specifications approved by Manager for the installation, reconfiguration and/or modification of the Distributed Network pursuant to Section 8(b).

(d) **Communications Spaces:** the telecommunications pathways, conduits, risers, raceways, HVAC ductwork, remote telecom closets, mechanical rooms, utility connections and entries into and through the Building, and that certain area of the roof as set forth on the Approved Plans and other areas within or without the Building for non-exclusive use by ExteNet, but expressly excluding the Head-End Area.

(e) **Customer:** a WSP that has executed a Network Access Agreement with ExteNet.

(f) **Distributed Network:** the integrated wireless network composed of the ExteNet Equipment to be installed and operated by ExteNet in the Building, consisting of a distributed antenna system or other wireless technologies.

(g) **Distributed Network Equipment:** any communications equipment, including antennas, waveguide, cabling, wiring, battery back-up system, routers, switches, accessories, radio frequency combiners, couplers, splitters, attenuators, optical converters, amplifiers, HVAC probes and any other related equipment or infrastructure necessary for the installation and operation of the Distributed Network, and includes the ExteNet Equipment and the equipment of Customers.

(h) **ExteNet Equipment:** the Distributed Network Equipment owned, leased and/or controlled by ExteNet.

- (i) **ExteNet NOC:** ExteNet's network operations and control center, from which ExteNet monitors its distributed networks and which Manager should contact in the case of emergencies.
- (j) **FCC:** the Federal Communications Commission or any successor agency of the United States government that licenses spectrum or radio frequencies for the provision of Wireless Services.
- (k) **Force Majeure Events:** acts of God, war, natural calamities, strikes, lockouts, or other labor stoppages or disturbances, civil disruptions, riots, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause beyond the reasonable control of a Party, and which such Party could not have prevented through the exercise of reasonable due diligence, but expressly excluding a Party's lack of sufficient funds to perform.
- (l) **Head-End Area:** that certain secured area or room comprising approximately 800 square feet in the Building under ExteNet's exclusive control and in which the head-end components of the ExteNet Equipment and certain equipment of its Customers are or will be located, the specific location of which is specified or depicted in Exhibit 1.
- (m) **Interference:** interference (through electrical or electromagnetic output or radio frequency) with the proper operation of equipment of third parties that is properly installed and operating within its manufacturer's guidelines, instructions or other sound engineering practices. **Interferes** means the act of Interference.
- (n) **Network Access Agreement:** any of the agreements to be entered into between ExteNet and a WSP, granting such WSP the right to interconnect its telecommunications equipment to the Distributed Network and to distribute its Wireless Services in and/or about the Building.
- (o) **Party:** either ExteNet, Manager or Owner, and their respective successors and permitted assigns.
- (p) **Plans and Specifications:** drawings, plans and specifications for the installation of the Distributed Network, detailing all wiring designations, the type, size and location of ExteNet Equipment, and the Communication Spaces and the Head-End Area to be used by ExteNet and its Customers.
- (q) **Prime Lease:** a lease, easement or other interest from a third party from or through which Owner derives its interest in the Building.
- (r) **Wireless Services:** any signal transmission, emission or reception services over spectrum licensed by the FCC to WSPs on frequencies in the 700 MHz, 800 MHz, 900 MHz, the Personal Communications Services (PCS) bands (1.9 GHz), the Advanced Wireless Services bands 1.7 GHz and, 2.1 GHz) and 2.5 GHz bands, and such other bands as are or become part of the migration path of WSPs with regard to voice and data to 4G or future generational functionality or may otherwise be licensed by the FCC from time to time, or over unlicensed spectrum for the provision of wireless voice and/or data telecommunications services.
- (s) **WSP:** a provider of Wireless Services, including those entities operating the branded services of AT&T Mobility, Sprint, T-Mobile and Verizon Wireless.

**3. Pre-Commencement Date Activities.** Subject to the terms and conditions of this Agreement and prior to the Commencement Date, Manager and Owner hereby grant ExteNet the right, following advance notice to Manager and during customary working hours, to enter the Building (subject to Section 9) to perform examinations, surveys, tests and evaluations. ExteNet may request reasonable information from Manager, from time to time, to aid in its design of the proposed Distributed Network, including a list of the existing wireless communications users in or at the Building, building and floor plans, and structural and environmental reports possessed by Manager or Owner or within Manager and/or Owner's reasonable control. Manager agrees to exercise commercially reasonable efforts to provide to ExteNet as soon as possible after request such Building-related information.

**4. Grant of Rights to Head-End Area and Communications Spaces.** Upon the commencement of construction and/or installation of the Distributed Network through the balance of the Term, Manager and Owner grant to ExteNet the exclusive right to occupy, control and use the Head-End Area (subject to the rights of Manager and Owner pursuant to Section 9(b)), together with the non-exclusive right to access and use the Communications Spaces, consistent with the Approved Plans. In connection with the foregoing, ExteNet shall have the right, consistent with the Approved Plans, to install and operate the Distributed Network, which specifically includes the rights to place, install, operate, maintain, repair and replace the Distributed Network Equipment of ExteNet and its Customers in the Head-End Area and Communications Spaces. The uses described in this Section 4 expressly contemplate that ExteNet shall be permitted, from and after execution of this Agreement, to enter into one or more Network Access Agreements with its Customers provided that (i) the term of each Network Access Agreement shall not exceed the maximum Term of this Agreement; and (ii) ExteNet shall remain fully liable for compliance with all of the terms and conditions, and fulfillment of all of its covenants contained in this Agreement, notwithstanding the terms of any such Network Access Agreement.

## 5. Exclusive Wireless Infrastructure Rights.

(a) As a material inducement for ExteNet to enter into this Agreement and in contemplation of the substantial investment that ExteNet will make in the Distributed Network, Manager and Owner grant ExteNet, from and after the Effective Date and throughout, the exclusive right to market, install, operate and control the operation of telecommunication facilities or systems at or within the Building (as the Building now exists and as later expanded or modified, from time to time), which facilities or systems provide or may provide Wireless Services within or about the Building or any portion thereof using spectrum or frequencies licensed to WSPs by the FCC.

(b) *Rooftop Exception.* Notwithstanding the grant of exclusivity in Section 5(a), Manager reserves the right to grant WSPs or others the right to install and operate wireless telecommunications antennas and related equipment on the rooftop(s) of the Building, provided however that:

(i) the primary purpose of each such telecommunications antenna and related equipment is to serve outdoor areas surrounding the Building rather than to provide the propagation of Wireless Services in the Building in competition with the Distributed Network, either as installed or proposed; and

(ii) the installation and operation of such telecommunications antennas and related equipment by such WSP do not Interfere with the Distributed Network.

## 6. Payments to Manager

(a) *Access Rights Fee.* In consideration of the access and other rights granted under this Agreement, ExteNet will pay Manager, within 30 days of the Effective Date, a one-time fee in the amount of \$50,000.

(b) *Network Access Agreement Fee.* In addition, ExteNet shall remit to Manager, within 30 days after the respective dates the initial term commences under the Network Access Agreements between ExteNet and its Customers, a payment of \$200,000 (for each of the first and second unaffiliated Customers) and \$100,000 (for each of the third and fourth unaffiliated Customers). No Network Access Agreement fee shall be due after the fourth Customer. If ExteNet finds the WSPs are not willing to contract to join the Network subject to pricing reflecting the Network Access Agreement Fee, ExteNet may approach the Manager to modify the fee amounts.

(c) *Revenue Sharing Fee.* In addition, ExteNet shall also remit to Manager a 30% share of the Gross Recurring Revenues collected by ExteNet from Customers, only during the first and second Renewal Terms, in accordance with this Section 6(c) (the "**Revenue Sharing Fee**"). ExteNet shall compute the Revenue Sharing Fee on a monthly basis as provided below and shall remit the Revenue Sharing Fee to Manager on a quarterly basis in arrears for the calendar quarter just concluded (with a calendar quarter ending March 31, June 30, September 30 and December 31), beginning on the thirtieth day after the close of the first calendar quarter following the expiration of the Initial term and on the thirtieth day after the close of each calendar quarter thereafter. The Revenue Sharing Fee for a particular calendar month shall equal 30% of the Gross Recurring Revenues collected by ExteNet in such month from all Customers.

(d) For purposes hereof, the term "**Gross Recurring Revenues**" mean all regularly or scheduled recurring rents, payments, fees, sums and other amounts actually collected from a Customer and received by ExteNet and allocable to such Customer's Network Access Agreement, which expressly *excludes*, for the avoidance of doubt: (A) construction management or supervision fees related to the installation of the Customer's equipment to serve in whole or in part the Distributed Network; (B) contributions of capital or payments by a Customer to reimburse ExteNet in whole or in part for the installation of the Distributed Network Equipment serving, in whole or in part, of the Building; and (C) any reimbursements or pass-throughs from or contributions by a Customer to ExteNet for utility charges, taxes and other pass-through expenses or in connection with work performed or equipment installed by ExteNet for or on behalf of Customer.

(e) With each quarterly payment of the Revenue Sharing Fee, ExteNet shall provide Manager with a written statement setting forth the amount of Gross Recurring Revenues collected by ExteNet with respect to the Distributed Network in the calendar quarter just concluded. Within 90 days after the conclusion of any calendar year, upon 10 days' prior written notice to ExteNet, Manager shall have the right to cause an inspection or audit to be made of ExteNet's books and records pertaining to the Gross Recurring Revenues payable or collected by ExteNet from Customers with regard to the Distributed Network for the immediately prior calendar year. The inspection or audit shall be performed by a certified public accountant, who shall not be compensated on a contingent fee basis, appointed or designated by Manager; shall occur during normal business hours at the principal office of ExteNet; and shall be completed by Manager with 90 days of the commencement of such audit or inspection (unless a delay in completing such audit or inspection results from the acts or omissions of ExteNet). If such audit or inspection reveals, in the judgment of Manager, an underpayment to Manager of the Revenue Sharing Fee for such calendar year, then Manager will give notice to ExteNet of such underpayment, accompanied by a reasonably detailed explanation of and together with reasonably detailed supporting data evidencing the basis

on which the claim of an underpayment is made, which claim of underpayment shall be given, if at all, by Manager no more than 30 days after the date Manager completes its audit or inspection. The cost of any such inspection or audit is to be borne by Manager unless if such underpayment by ExteNet is determined to be in excess of \$5,000.00 for any particular calendar year, in which case, the reasonable cost of any such third-party inspection or audit shall be borne by ExteNet and reimbursed to Manager within 30 days after presentation of an invoice to ExteNet therefor. Where such inspection or audit uncovers an actual underpayment to Manager of the Revenue Sharing Fee for such calendar year, ExteNet shall pay Manager the amount of the underpayment within 30 days after receipt of an invoice from Manager. ExteNet shall promptly remit to Manager the amount of the underpayment. The failure of Manager to timely request such inspection or audit under the provisions of this Section 6(e) within 90 days after the conclusion of a calendar year or the failure of Manager to provide timely notice of an underpayment as aforesaid shall be deemed conclusive acceptance and agreement by Manager with the calculation of the Revenue Sharing Fee for the immediately prior calendar year.

(f) ExteNet shall utilize an accounting system in accordance with generally accepted accounting principles (GAAP), consistently applied, that will accurately record all Gross Recurring Revenues. ExteNet shall keep at its main office, for at least five years after the passage of any particular calendar year records conforming to such accounting system showing all Gross Recurring Revenues for such particular calendar year.

(g) In connection with the receipt by Manager of any documents or instruments involving the statement or calculation of Gross Recurring Revenues or the Revenue Sharing Fee, the inspection or audit as contemplated in Section 6(e), Manager and if applicable, the person and/or entity conducting the inspection or audit, agree to keep all such information gathered as confidential and shall not disclose same to any other person or entity except on a need-to-know basis in connection with the administration of or a dispute involving this Agreement, any existing financing or any prospective sale, lease or leaseback of all or any part of the Building, or any registration or filing with any governmental authority or pursuant to a subpoena or other judicial process. In addition to the foregoing, all information collected pursuant to the audit or inspection described in this subsection 6(g) shall be considered confidential under applicable Utah law as set forth in Section 32(k) of this Agreement.

(h) *Payment Mechanics.* ExteNet shall remit the Access Rights Fee and Network Access Agreement Fees to the address as provided in Section 1 for non-emergency notices, or to such other person or entity or to such other address as Manager may, from time to time, designate in writing at least 30 days in advance of any payment date.

(i) *Non-refundable.* All payments made by ExteNet to the Manager or Owner are non-refundable and shall be retained by the Manager or Owner in the event of (1) the valid termination of this Agreement by Manager or Owner due to an uncured ExteNet Event of Default or (2) voluntary early termination by ExteNet.

## **7. Duration of Agreement.**

(a) The Initial Term of this Agreement is as set forth in Section 1, and is subject to extension as set forth in Section 7(b). Within 60 days after the Commencement Date, the Parties shall confirm the Commencement Date on a form prepared by ExteNet and delivered to Manager. Notwithstanding anything in this Agreement to the contrary, if (i) an executed Network Access Agreement has an initial term of ten years or less and (ii) the initial term of such Network Access Agreement commences within five years of the Commencement Date and would otherwise expire after the expiration of the Initial Term of this Agreement as then calculated, then the Initial Term of this Agreement shall be automatically extended to be coterminous with the initial term of such Network Access Agreement. Within 20 days of the commencement of the initial term of the Network Access Agreement that effects an extension the Initial Term by operation of the prior sentence, ExteNet shall give written notice of same to Manager, accompanied by a redacted copy of such Network Access Agreement.

(b) After expiration of the Initial Term, the Term will be automatically extended for up to two consecutive Renewal Terms, each Renewal Term commencing immediately after the expiration of the then-applicable Term and expiring five years thereafter unless ExteNet gives written notice to Manager at least 60 days prior to the expiration of the then-current Term (*i.e.*, the then existing Initial Term or Renewal Term), stating that ExteNet elects not to exercise its option to extend the Term for the next succeeding Renewal Term.

## **8. Installation and Maintenance of the Distributed Network.**

(a) *Coverage Area.* The Distributed Network is intended to cover or provide enhanced coverage to the Coverage Areas in the Building as specified in Section 1.

(b) *Plans and Specifications.*

(i) Prior to installing the Distributed Network Equipment, ExteNet shall deliver to Manager Plans and Specifications showing the proposed size and location of the ExteNet Equipment, the location of risers and

wiring connecting same to the power supply source and the telephone lines. Manager shall review the Plans and Specifications promptly after receipt and shall provide written notice to ExteNet either approving or rejecting same, such approval not to be unreasonably withheld, conditioned or delayed. Manager may evidence its approval by written endorsement upon the Plans and Specifications. Upon such approval, the Plans and Specifications shall be deemed the Approved Plans. If Manager rejects any Plans and Specifications, Manager shall accompany such rejection with specific written reasons, after which ExteNet may resubmit amended Plans and Specifications, which Manager shall promptly review and either approve or reject.

(ii) If the Head-End Area is not designated on Exhibit 1 at the time of the execution of this Agreement, then ExteNet shall include in the Plans and Specifications submitted to Manager under Subsection 8(b)(i), a designation of the proposed Head-End Area. If Manager rejects ExteNet's proposed Head-End Area, Manager shall include specific written reasons and a suggested substitute Head-End Area. Upon ExteNet and the Manager's agreement as to location of the Head-End Area, both ExteNet and the Manager shall initial the drawing, sketch or other description of the location of the Head-End Area and attach such drawing, sketch or other description to this Agreement as Exhibit 1.

(iii) After approval of the Approved Plans, if ExteNet or a Customer desires to materially or substantially modify the Distributed Network, then ExteNet shall seek Manager's approval; provided however, that equipment replacement, routine maintenance or repairs which do not involve additional connections to or work on or otherwise adversely affect equipment, cables or other property of Manager or other tenants or third parties in the Building shall not be deemed to be a material or substantial modification of the Distributed Network and shall not require Manager's prior written approval. The process to amend Approved Plans after Manager's initial approval shall be as set forth in this Section 8(b).

(iv) Manager's approval of Plans and Specifications is not a representation or acknowledgement that the Distributed Network Equipment will not cause Interference with other systems or equipment in the Building or that the Plans and Specifications comply with Applicable Law, responsibility for which shall remain with ExteNet. Manager and Owner shall have the right, following at least two days' prior written notice to ExteNet, to inspect the Distributed Network Equipment from time to time to determine that the same is installed in accordance with the Approved Plans.

(c) *Use of Communications Spaces.* Manager acknowledges that the operation of the Distributed Network may use the HVAC system, ductwork, and other Communications Spaces of the Building (which may include the rooftop for placement of GPS antennas) of which ExteNet does not have exclusive rights of use. Accordingly, Manager shall provide ExteNet reasonable advance notice of any maintenance, repair, replacement or upgrade of those portions of the HVAC system or other Communications Spaces used in part by the Distributed Network or which are reasonably anticipated to impact the operation of the Distributed Network.

(d) *ExteNet Upgrade Covenant.* Upon the initial installation of the ExteNet Equipment and through the Term, ExteNet covenants to maintain and upgrade the ExteNet Equipment so that the ExteNet Equipment will be functionally capable of accommodating "New Services." "**New Services**" mean those additional and material new Wireless Services and/or functions actually offered by ExteNet's Customers within other buildings in the greater metropolitan area in which the Building is located which have uses comparable to that of the Building. If the ExteNet Equipment installed at the Building is not capable of hosting specified New Services, and Manager or one or more Customers employing FCC-licensed frequencies within the scope of the exclusivity granted pursuant to Section 5 have requested ExteNet to upgrade the ExteNet Equipment at the Building in order to accommodate one or more such New Services, then ExteNet shall exercise commercially reasonable efforts to upgrade the ExteNet Equipment to accommodate the New Services subject to ExteNet reaching a mutually acceptable agreement with Manager or one or more Customers with regard to making such New Services available to such Customer(s). Notwithstanding anything contained in this Agreement to the contrary, if ExteNet fails to perform fully its obligations under this section, and such failure continues for a period of 60 days from ExteNet's receipt of written notice from Manager of same, Manager and Owner's sole and exclusive remedy for such failure shall be the termination of ExteNet's exclusivity rights granted pursuant to Section 5 solely with regard to such New Services at the Building which ExteNet's then-existing ExteNet Equipment is unable to accommodate.

(e) *ExteNet Maintenance.* ExteNet shall install, construct and maintain the Distributed Network, and from the Commencement Date through the balance of the Term, keep and maintain the non-structural portions of the Head-End Area in a commercially reasonable condition and repair. All work by ExteNet or any Customer is to be performed in compliance with Applicable Law and in a good and workmanlike manner and in such a manner so as not to interfere materially with, delay or impose any additional expense upon Manager or Owner in maintaining, owning or operating the Building. ExteNet agrees to maintain the ExteNet Equipment in good operating condition and within industry-accepted safety standards. Notwithstanding anything in this Agreement to the contrary, ExteNet's obligation to install and construct the Distributed Network (and thereafter maintain it) is subject to the



condition precedent that ExteNet secure a fully executed Network Access Agreement pertaining to the Building from at least one WSP.

(f) *Owner Maintenance.* Manager shall be responsible for the structural maintenance and upkeep of the Building, the roof, the mechanical, plumbing, HVAC and electrical systems, and the common areas of the Building consistent with Manager's policies and procedures pertaining thereto.

(g) *Relocation.* After the installation of the Distributed Network Equipment, Manager may require ExteNet to relocate the Head-End Area and/or the Distributed Network Equipment (whether located within or outside the Head-End Area) as follows:

(i) If Manager reasonably determines that the Distributed Network Equipment, or any component thereof, is causing Interference with the Building's base building systems, including the HVAC, and such Interference cannot be remedied to the reasonable satisfaction of Manager within a reasonable time, Manager may require ExteNet to relocate such Interfering Distributed Network Equipment and/or the Head-End Area upon at least 60 days' prior written notice to ExteNet. In such event, ExteNet shall relocate or cause the relocation of such Interfering Distributed Network Equipment and/or the Head-End Area and shall repair any damage caused to the Building as a result of the relocation, all at the sole cost and expense of ExteNet or, to the extent the equipment causing the Interference is that of a Customer, of the Customer.

(ii) If Manager requires all or some of the Distributed Network Equipment and/or the Head-End Area to be relocated for any reason other than Interference (as provided in Subsection 8(g)(i)), Manager may require ExteNet to relocate such Distributed Network Equipment and/or the Head-End Area upon at least 90 days' prior written notice to ExteNet. In such event, ExteNet shall prepare an estimate of the relocation costs and deliver the estimate to Manager within ten days of such notice. Manager will be entitled to rely upon the estimate for the purposes of determining whether to proceed with the relocation. If Manager determines to proceed, ExteNet shall relocate such Distributed Network Equipment and/or the Head-End Area and shall repair any damage caused to the Building as a result of the relocation, all at the sole cost of Manager, in accordance with the estimate. If ExteNet pays for any such costs directly, then Manager shall reimburse ExteNet within 30 days of an invoice from ExteNet accompanied by reasonable documentation substantiating the amount for which ExteNet seeks reimbursement.

In no event shall a relocation of any of the Distributed Network Equipment or the Head-End Area be required under Subsection 8(g)(ii) if such relocation would negatively affect the functionality or coverage of the Distributed Network as existing immediately before such relocation. Further, Manager shall permit ExteNet to effect any relocation under this Section 8(g) using a procedure that will ensure that the Distributed Network Equipment at the new location is fully operational and optimized for service prior to discontinuing service from the previous location.

## **9. Access.**

(a) The employees, agents and contractors of ExteNet and its Customers shall be entitled to 24 hour, seven days per week access to the Head-End Area and the Communications Spaces for the purpose of installing, operating and maintaining the Distributed Network Equipment, including non-exclusive use of one or more elevators. All such access shall be subject to Section 11 generally and the special access requirements, if any, set forth on Exhibit 3. Persons who are authorized by ExteNet and its Customers and approved in accordance with Manager's security procedures for the Building may have access to the Head-End Area and to the Communications Spaces to the extent their respective equipment is located therein.

(b) Manager and its representatives may enter the Head-End Area or the Communications Spaces for the purpose of inspections, conducting maintenance, repairs and alterations which Manager wishes to make to the Building or to perform any acts related to the safety, protection, preservation, or improvement of the Head-End Area or the Building generally or for such other purposes as Manager reasonably considers necessary. Manager shall use reasonable efforts to minimize any interference with the operation of the Distributed Network. Manager shall provide ExteNet at least two business days' prior notice of entry (except in the case of an emergency) into the Head-End Area. ExteNet reserves the right to escort or accompany Manager and its representatives in connection with any entry into the Head-End Area. If Manager's anticipated entry into the Head-End Area or Communications Spaces might require or give rise to a shut-down of the Distributed Network, then Manager shall provide ExteNet with a reasonable opportunity to approve the proposed work, propose alternative solutions or to make necessary back-up arrangements.

**10. Electrical Utilities.** ExteNet shall pay for all electricity consumed in the Head-End Area as a result of the operation of the Distributed Network. ExteNet may either (i) contract directly with the electric utility servicing the Building and have such utility install, at ExteNet's sole cost, separate metering devices to measure ExteNet's electrical usage in the Head-End Area, in which case ExteNet shall pay such utility directly for such usage, or (ii) connect to the Building's electrical system and install, at ExteNet sole cost, a sub-meter to measure ExteNet's

usage in the Head-End Area. If ExteNet is not billed directly by the electric utility, (a) ExteNet shall pay for ExteNet's power consumption based on the average kilowatt-hour rate actually paid by Manager to the utility for electricity in the Building without mark-up by or profit to Manager; (b) Manager shall bill ExteNet for such utility usage periodically as and when Manager receives its electricity bill for the Building (but in no event in excess of 90 days after Manager receives such electricity bill), and will include in invoices sent to ExteNet a statement of ExteNet's usage and evidence reasonably substantiating Manager charges therefor; and (c) ExteNet shall pay the charges so billed by Manager within 30 days after receipt of Manager's bill and required accompanying documentation. Notwithstanding the foregoing, Manager consents to the consumption of incidental or immaterial amounts of electricity by that portion of the Distributed Network Equipment located outside of the Head-End Area, provided that such equipment is connected to the Building's electrical system by plugging such equipment into standard 120 volt wall-mounted sockets or receptacles. Manager agrees to make a reasonable effort to schedule any planned utility outage outside of the Building's normal business day and to notify ExteNet at least two business days in advance of any planned utility outage of which Manager has notice that may interfere with the use and operation of the Distributed Network.

**11. Rules and Regulations.** ExteNet agrees to comply with any rules and regulations, including security requirements, Manager establishes from time to time, provided that such rules or regulations (i) are delivered to ExteNet prior to being enforced against ExteNet; (ii) are applied to the Building's tenants, licensees, occupants, invitees, employees, contractors and subcontractors on a non-discriminatory basis; (iii) are not inconsistent with the terms and conditions of this Agreement; and (iv) do not require ExteNet to pay fees or other amounts to Manager or any of its Affiliates, except as otherwise explicitly provided in this Agreement. If a conflict between such rules and regulations and the terms of this Agreement exists, the terms of this Agreement will prevail and supersede such inconsistent rules and regulations. The current rules and regulations are attached hereto as Exhibit 2.

## **12. Electromagnetic Interference and Emissions.**

(a) The operation of the Distributed Network shall not materially Interfere with (i) the use of the Building by Manager or existing tenants of Manager or Owner (provided such tenants use their space primarily for the same or similar use as a majority of the other tenants in the Building and such use is consistent with the purpose for which the Building is operated); or (ii) the maintenance or operation of the existing systems and components of the Building, including the roof, MATV, CATV or other video systems, HVAC systems, elevator systems, computers, telephone systems, or any other system serving the Building (collectively, "**Priority Uses**"); provided in all events, the equipment which is subject to the Priority Uses is installed and operated consistent with the manufacturer's installation and operation guidelines and instructions, Applicable Law and, to the extent applicable, sound engineering practices. If any Interference resulting directly from ExteNet's operation of its Distributed Network in the Building materially Interferes in any manner with Priority Uses, upon verbal or written notice from Manager to the ExteNet NOC, ExteNet agrees to make prompt efforts to rectify the Interference. Manager may require ExteNet to cease operations (except for intermittent testing on a schedule approved by Manager) for all or a part of the Distributed Network until the Interference with Priority Uses has been corrected to the Manager's reasonable satisfaction. If ExteNet has not corrected such Interference within 90 days after the initial notice to ExteNet, Manager may require that ExteNet immediately remove that portion of the Distributed Network Equipment causing the Interference.

(b) Notwithstanding Section 12(a), if (i) an emergency situation exists which poses an immediate threat to either life or human safety or is likely to result in significant property damage and (ii) Manager reasonably determines that such emergency situation is attributable to the operation of the Distributed Network, then Manager may take such commercially reasonable action as reasonably appears necessary to avoid such consequences, provided Manager notifies the ExteNet NOC either before (if practical) or promptly after taking such action. Notwithstanding the prior sentence, if during the period of any emergency ExteNet acts in good faith to remedy the cause of such emergency, Manager shall restore whatever services it may have previously disrupted in order to permit ExteNet to continue its efforts to remedy the cause of such emergency.

(c) Manager and Owner covenant and agree that, from and after the Effective Date through the Term, Manager and/or Owner (i) will not install equipment in or at the Building or any of Owner's property contiguous to the Building that is of a type and frequency which may reasonably be expected to cause Interference with the operation of the Distributed Network; and (ii) will employ commercially reasonable efforts to prevent its tenants, licensees or occupants of the Building from installing any such Interfering equipment. If the installation or operation of such equipment causes Interference with the proper operation of the Distributed Network Equipment, Manager and/or Owner agrees to employ commercially reasonable efforts to direct and cause such interfering party to correct and eliminate the Interference or to remove the items causing such Interference, except for intermittent testing for the purpose of eliminating such Interference. Notwithstanding the foregoing, nothing in this section shall impair or interfere with the right of (i) any existing or future tenant of the Building or Manager from utilizing general

office machines and equipment, such as copiers, computers, servers, printers, etc. or maintaining within such tenant's demised premises in the Building a Wi-Fi network using unlicensed frequencies; or (ii) Manager to operate within the Building those systems and components described in clause (ii) of Section 12(a), provided in all events, the same are installed and operated consistent with the manufacturer's installation and operation guidelines and instructions, Applicable Law and, to the extent applicable, sound engineering practices.

(d) ExteNet shall at all times during the Term comply with then current Applicable Law, including that pertaining to non-ionizing radiation or electromagnetic emissions. ExteNet shall be responsible for such compliance either with respect solely to the ExteNet Equipment or the integration of the ExteNet Equipment with any other telecommunications facilities or other electromagnetic emitting facilities in the Building. ExteNet shall, at its sole cost, perform any alterations or adjustments to the ExteNet Equipment that may be required during the Term due to a change in or the implementation of Applicable Law, including a reduction of the effective radiated power of the Distributed Network.

**13. Hazardous Substances.** ExteNet agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Building in violation of Applicable Law. Except as disclosed on Exhibit 3, Manager and Owner represent and warrant that (i) neither it, nor to its knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Building in violation of Applicable Law; and (ii) it will not, and will not permit any third party to, use, generate, store or dispose of any Hazardous Material on, under, about or within the Building in violation of Applicable Law. As used in this section, "**Hazardous Material**" means petroleum or any petroleum product, asbestos, any substance known by the state in which the Building is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any Applicable Law.

**14. Enjoyment of Rights and Title.**

(a) If Owner or an Affiliate thereof occupies and/or operates the Building under a Prime Lease, Owner agrees to provide a true and complete copy of the Prime Lease (redacted to exclude rent and other financial, proprietary or confidential information) upon ExteNet's request. On Exhibit 3 to this Agreement, Owner has indicated whether the Building is owned or leased by Owner, and if leased by Owner, the duration or term of the Prime Lease, which information Owner represents to ExteNet is true.

(b) Owner represents, covenants and warrants to ExteNet that (i) Owner has sufficient title to the Building in order to grant the rights to ExteNet contemplated under this Agreement without the consent or joinder of a third party not had and obtained; (ii) that Owner's interest in the Building is free and clear of any restrictions, easements, leases or licenses that will interfere with, impair or adversely affect the right of ExteNet to own, install and operate the Distributed Network as permitted by this Agreement; (iii) Owner's execution and performance of this Agreement will not violate any Applicable Law, covenants, or the provisions of any mortgage, deed of trust, encumbrance or lease binding on Owner; (iv) to Owner's actual knowledge, Owner is not in default of or aware of the occurrence of a condition that with the mere passage of time or the giving of notice will ripen into a default under any ground or underlying leases from which Owner derives its interest in the Building or under any mortgage or deed of trust which encumbers the Building; and (v) so long as ExteNet timely performs its obligations under this Agreement, ExteNet shall have full and uninterrupted enjoyment of and rights to own, operate and maintain the Distributed Network and the exclusive right to use and occupy the Head-End Area.

**15. Mechanics Liens.** ExteNet shall not suffer or permit any mechanic's, laborer's, or materialman's lien to be filed against the Building or any part thereof by reason of work, labor, services, or materials requested by ExteNet; and if such lien shall at any time be so filed, ExteNet shall cause it to be cancelled and discharged of record (by bonding or otherwise), within 15 days after notice of the filing thereof, and ExteNet shall indemnify and hold harmless Manager and Owner from any loss incurred in connection therewith.

**16. Equipment as Personalty.** The Distributed Network Equipment shall remain the personal property of ExteNet or the Customer which owns same notwithstanding the fact that such equipment may be affixed or attached to the Building. The Distributed Network Equipment shall belong to ExteNet and the Customers, and shall be designed to be removable upon the expiration or termination of this Agreement in compliance with the terms and conditions of Section 29. Owner and Manager waive and renounce any interest in the Distributed Network Equipment.

**17. Personal Property Taxes and Other Charges.** ExteNet shall pay, prior to delinquency, any personal property taxes, charges or fees separately identifiable and directly attributable to the presence of the Distributed Network Equipment and the use of portions of the Building by ExteNet for the Distributed Network that are levied under any Applicable Law. Notwithstanding the foregoing, ExteNet shall have no liability for any excess profit taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal, state and

local income taxes, and other taxes to the extent applicable to Manager or Owner's gross or net income or chargeable to Manager as a result of Manager's business.

**18. Subordination, Non-Disturbance and Attornment.** This Agreement is subject and subordinate to all Prime Leases affecting the Building and to all mortgages, deeds of trust and similar security documents that may now exist encumbering the Building or any portion thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Owner represents to ExteNet that all mortgages, deeds of trust and similar security documents that currently encumber the Building or any portion thereof are listed on Exhibit 3. Upon request, Owner shall undertake commercially reasonable efforts to obtain and deliver to ExteNet prior to the Commencement Date and thereafter as new Prime Leases, mortgages, deeds of trust and similar security documents arise, an executed subordination, non-disturbance and attornment agreement in the standard form respectively promulgated by each applicable mortgagee, beneficiary, lessor or other superior interest holder from which Owner derives its interest in the Building, in recordable form, providing in substance that such mortgagee, beneficiary, lessor or senior interest holder agrees that ExteNet's rights under this Agreement shall not be terminated or otherwise disturbed by such mortgagee, beneficiary, lessor or senior interest holder following any foreclosure, deed-in-lieu of foreclosure or other event as long as this Agreement is in force and effect and ExteNet is not subject to an ExteNet Event of Default, and ExteNet agrees to attorn to and recognize such mortgagee, beneficiary, lessor, senior interest holder or the purchaser of the Building at a foreclosure sale or pursuant to a deed in lieu of foreclosure as Owner.

**19. Waiver of Liens.** Owner hereby waives, renounces, and quitclaims any and all statutory liens which Owner may have with respect to any of the Distributed Network Equipment. ExteNet may pledge or collaterally assign its ownership or other rights in its property located on the Building to any financing source which ExteNet may select, provided however that such collateral assignment or pledge shall not affect Owner's interest in the Building. So long as any lender which has provided financing or funding to ExteNet has cured any failure of ExteNet to perform its obligations under this Agreement within the cure or grace periods set forth in this Agreement, Owner agrees not to dispossess ExteNet or terminate this Agreement and agrees to accept the performance of such lender in curing such failure as that of ExteNet. Owner hereby agrees to give notice of any failure or any ExteNet Event of Default to any lender of ExteNet of which Owner has actual knowledge.

**20. Estoppel Agreements.** Each Party agrees to provide to the other from time to time, within 15 days of the other Party's written request, a statement duly executed by such Party (i) certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) stating whether or not, to the actual knowledge of the receiving Party, the other Party is in default in performance of any of its obligations under this Agreement, and whether the receiving Party is in default to the receiving Party's actual knowledge, and, if so, specifying each such default of which the receiving Party may have knowledge; and (iii) certifying such other facts as the requesting Party reasonably requests, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the Party requesting such certificate may be dealing and their respective successors and/or permitted assigns.

**21. Insurance.** ExteNet shall maintain, from the Commencement Date through the balance of the Term (and if ExteNet shall occupy or conduct activities in or about any portion of the Building prior thereto or after the Term, then also during such period): (i) commercial general liability insurance including contractual liability coverage, with a minimum coverage of \$1 million per occurrence and \$2 million general aggregate per location for injuries to, or illness or death of, persons and damage to property occurring in or about the Building; and (ii) workers' compensation insurance in statutory limits. The commercial general liability insurance policy shall name Manager and Owner and any other parties reasonably designated by Manager or Owner with an interest in the Building as additional insureds and shall be primary to, and not contributing with, any liability policies carried by such additional insureds. ExteNet's commercial general liability insurance shall: (i) be issued by an insurance carrier with a general policyholders' rating of A- or better and a financial size ranking of Class VIII or higher in the most recent edition of Best's Insurance Guide; and (ii) provide that it may not be cancelled or allowed to lapse unless 30 days' (except for nonpayment of premium in which case 10 days') prior written notice to Manager is first given. ExteNet shall deliver to Manager of certificate evidencing the existence of such commercial general liability insurance as required by this section on or before the effective date of such policy and thereafter prior to the expiration date of such policy.

**22. Waiver of Subrogation.** Manager, Owner and ExteNet release each other and their respective principals, officers, directors, employees, representatives and agents, from any claims for damage to any person, the Building or the Distributed Network caused by, or that result from, risks insured against under any property or casualty insurance policies carried by the Parties and in force at the time of any such damage to the extent that such release and waiver does not invalidate any insurance policy held by a Party. Each Party shall exercise commercially

reasonable efforts to cause each insurance policy it obtains to provide that the insurance carrier waives all right of recovery by way of subrogation against the other in connection with any damage covered by any such policy.

### **23. Indemnities.**

(a) ExteNet shall indemnify, defend and hold harmless Manager and Owner and their respective stockholders, directors, members, managers, partners, officers, employees and agents (collectively, "**Owner Parties**") from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees actually incurred, which may be imposed upon, incurred by or asserted against the Owner Parties for bodily injury or property damage based upon, arising from or due to (i) any work or act done in, on or about or use of the Building or any part thereof for the Distributed Network by ExteNet, its agents, contractors, subcontractors or employees, except if such work or act is done or performed by the Owner Parties or their contractors, agents or employees; or (ii) any negligence or other wrongful act or omission on the part of ExteNet or any of its agents, contractors, subcontractors or employees; excluding in each event liability, obligations, damages, penalties, claims, costs, charges and expenses caused or resulting from the negligence or willful misconduct of Owner Parties or their employees, contractors or subcontractors.

(b) Manager and Owner shall indemnify, defend and hold harmless ExteNet and its stockholders, directors, officers, employees and agents (collectively, "**ExteNet Parties**") from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees actually incurred, which may be imposed upon, incurred by or asserted against the ExteNet Parties for bodily injury or property damage based upon, arising from or due to (i) any work or act done in, on or about or use of the Building or any part thereof, at the direction of Owner Parties or their agents, contractors, subcontractors or employees, except if such work or act is done or performed by the ExteNet Parties or their contractors, subcontractors, licensees, agents or employees; or (ii) any negligence or other wrongful act or omission on the part of Owner or any of its agents, contractors, subcontractors or employees; excluding in each event liability, obligations, damages, penalties, claims, costs, charges and expenses caused by or resulting from the negligence or willful misconduct of the ExteNet Parties or their employees contractors or subcontractors.

### **24. Assignment or Alienation of Agreement.**

(a) ExteNet may assign this Agreement without the prior consent of Manager or Owner to any person or entity which (i) is an Affiliate of ExteNet; (ii) purchases all or substantially all of (A) ExteNet's assets; or (B) ExteNet's indoor Distributed Network assets; or (iii) is a *bona fide* lender extending credit to ExteNet for the purpose of financing all or part of its business. ExteNet shall provide written notice to Manager of such an assignment within 30 days of the effectiveness of same.

(b) Except as provided in Section 24(a), ExteNet may assign this Agreement to any other third party with the prior written consent of Manager and Owner, which consent shall not be unreasonably withheld, conditioned or delayed and shall be based upon a demonstration to Manager and Owner that the proposed assignee has the operational capacity to perform the obligations that it would assume under this Agreement; and the capability as of the time of the proposed assignment to meet its financial obligations under this Agreement.

(c) Owner may assign this Agreement only to a person or entity that purchases or acquires title to the Building without the consent of, but with notice as soon as practicable to, ExteNet. Owner covenants and agrees that it shall not convey title to the Building unless Owner assigns this Agreement to the successor owner and the successor owner assumes the obligations of Owner thereafter arising under this Agreement.

**25. Casualty.** In case of damage to the Building, the Head-End Area or those portions of the Building which are essential to the operation of the Distributed Network by fire or other casualty, Manager shall notify ExteNet within 30 days of such damage, informing ExteNet whether Manager or Owner has elected to repair such damage, at its expense, to a condition as nearly as practicable to that existing prior to the casualty and otherwise consistent with Applicable Law, with reasonable speed and diligence, but subject to delays which may arise by reason of adjustment of loss under insurance policies or a Force Majeure Event. The foregoing notwithstanding, if Manager or Owner elects to perform such repairs and fails to complete same within 180 days from the date of such damage, or elects not to perform such repairs, then ExteNet may terminate this Agreement upon written notice to Manager. Unless such casualty damage is caused by the gross negligence or willful misconduct of Manager or Owner or its employees or agents, Manager or Owner shall not be liable for any inconvenience or annoyance to ExteNet or injury to ExteNet's business resulting in any way from such casualty or the repair thereof consistent with the terms of this Agreement. To the extent and for the time that the Building or the Head-End Area are thereby rendered unusable for the operation of the Distributed Network, any amounts payable by ExteNet to Manager shall proportionately abate.

**26. Condemnation.** During the Term, if any governmental or other authority shall take all or a portion of the Head-End Area, so that the remaining portion thereof shall not be of sufficient size or condition to permit the continuation of ExteNet's or a Customer's use in a commercially reasonable manner, or the Building through the exercise of the power of eminent domain, or by deed in lieu of condemnation, then ExteNet may terminate this Agreement by providing written notice to Manager and Owner within 30 days of such condemnation or taking, which termination shall be effective as of the date of the vesting of title in such taking. Manager, Owner and ExteNet shall each be entitled to pursue their own separate awards with respect to any such taking.

**27. Events of Default.**

(a) It shall be an **"ExteNet Event of Default"** if:

(i) one or more of ExteNet's representations or warranties made in this Agreement is false in any material respect;

(ii) ExteNet fails to pay any liquidated sum of money which ExteNet is required to pay under this Agreement and such failure continues more than ten business days after Manager provides written notice thereof to ExteNet;

(iii) ExteNet fails to observe or perform any terms and conditions which this Agreement requires ExteNet to observe or perform, other than payment failures specified in (ii) above, and ExteNet does not remedy such failure within 30 days after written notice of such failure or, if such failure is not reasonably susceptible to being remedied in such period, if ExteNet does not within such period commence to remedy such failure and thereafter exercise commercially reasonable efforts to prosecute such remedy to completion; or

(iv) ExteNet makes an assignment of all or substantially all of its property for the benefit of creditors, or files a voluntary petition under any bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against ExteNet under any bankruptcy or insolvency law, or if a permanent receiver is appointed for ExteNet or its property, and if such foregoing event occurs without the acquiescence or consent of ExteNet, such event continues or remains pending for 90 days after its initial occurrence.

(b) It shall be an **"Manager or Owner Event of Default"** if (i) one or more of Manager's or Owner's representations or warranties made in this Agreement is false in any material respect; or (ii) Manager or Owner fails to observe or perform any of the terms and conditions which this Agreement requires either the Manager or Owner to observe or perform, and Manager or Owner does not remedy such failure within 30 days after written notice of such failure, or if such failure is not reasonably susceptible to being remedied within such 30 day period, if Manager or Owner does not within such 30 day period commence to remedy such failure and thereafter exercise commercially reasonable efforts to prosecute such remedy to completion.

(c) After the occurrence of an ExteNet Event of Default or a Manager or Owner Event of Default, the non-defaulting Party shall be entitled to pursue any and all legal and equitable rights and remedies permitted by Applicable Law. Upon a valid termination of this Agreement, all rights of the Parties under this Agreement (other than those that shall or are intended to survive expiration or termination) shall terminate and ExteNet shall thereupon quit and surrender possession of the Head-End Area and the Communications Spaces to Manager in the condition required elsewhere in this Agreement. The non-defaulting Party shall have the obligation to mitigate its damages resulting from a default by the other Party.

(d) **Notwithstanding anything in this Agreement to the contrary, ExteNet, Manager and Owner hereby waive any claim that each may have against the other with respect to indirect damages (including for loss of use, data, business, goodwill, reputation, credit, revenue or profits) or any punitive, exemplary or consequential damages (but without limiting either Party's obligations to indemnify the other under Section 23).**

## **28. Termination of Agreement.**

(a) Prior to the Commencement Date, ExteNet may terminate this Agreement if ExteNet determines, in its sole discretion, that (i) the Building is not suitable for ExteNet and potential Customers' intended use from either an economic or a technical engineering basis; (ii) required consents from third parties necessary to install and/or operate the intended Distributed Network in the Building will be unreasonably difficult or expensive to acquire; (iii) pre-existing conditions, liens, easements, restrictions or other rights or grants exist which would interfere with ExteNet's intended use of the Building for the Distributed Network; or (iv) if ExteNet is unable to secure a fully executed Network Access Agreement or a written and binding commitment to execute a Network Access Agreement pertaining to the Building from at least one WSP. In any such event, ExteNet will have the right to terminate this Agreement upon written notice to Manager. If ExteNet does not provide such notice of termination prior to the Commencement Date, then ExteNet will be deemed to have waived the right to terminate this Agreement under this Section 28(a).

(b) Upon written notice to the other parties, and following a 60 day cure period during which ExteNet makes reasonable and good faith efforts to cure the defect, ExteNet may terminate this Agreement if:

(i) ExteNet does not, despite the exercise of good faith efforts and reasonable diligence, obtain or maintain any license, permit or other approval necessary for the construction and operation of the Distributed Network;

(ii) only one Network Access Agreement with a Customer for the Building is then in effect (*i.e.*, has not terminated or expired); or

(iii) ExteNet determines that the Building is not appropriate for its continuing operations for technological reasons, including irresolvable Interference.

(c) Manager may terminate this Agreement as provided in the next sentence if within eighteen (18) months of the Effective Date, at least one WSP has not fully executed a Network Access Agreement with ExteNet. In such event, at any time after such one year period, Manager may send written notice to ExteNet that this Agreement shall, without further act or deed, terminate pursuant to this section on the 60<sup>th</sup> day after such written notice, if the full execution of at least one Network Access Agreement has not occurred on or before such 60<sup>th</sup> day.

**29. Removal of ExteNet Equipment Upon Termination or Expiration of this Agreement.** Within 60 days of the termination or expiration of this Agreement, ExteNet shall cause the removal of all Distributed Network Equipment from the Building. In performing such removal, ExteNet shall restore the Head-End Area and the Communications Spaces to as good a condition as they were prior to the installation or placement thereof, reasonable wear and tear, casualty and acts of third parties excepted. Notwithstanding the foregoing, nothing contained in this Agreement shall require ExteNet to remove any of the fiber optic or other cable, wiring, sleeving or conduit installed by ExteNet or restore or fill-in the risers or any core drillings that ExteNet created in the Building or any improvements. ExteNet shall properly cut, cap and secure such fiber and other cable, wiring, sleeving or conduit within the Building or such other improvements within 60 days of the termination or expiration of this Agreement.

**30. Notices.** Ordinary course business communications in connection with the performance of this Agreement may be given electronically, by facsimile, by mail or any other comparable means, but any such communication will be deemed received only upon actual receipt. All other notices and communications, including specifically those which require the receiving Party to act or respond within a time period designated in this Agreement, those which threaten to declare or declaring the receiving Party in default under this Agreement, or those which contain demands or notices of termination of this Agreement, shall be in writing either personally delivered; mailed via United States certified mail, return receipt requested; or transmitted by overnight courier for next business day delivery to the addresses of ExteNet and Owner set forth in Section 1. Notices, other than ordinary course business communications, will be deemed to have been given upon either receipt or rejection. Notwithstanding the foregoing, (i) in the event of an emergency, the Parties may provide notices as provided in Section 1 via facsimile or electronic mail, and (ii) only notices and communications threatening to declare or declaring such receiving Party in default under this Agreement or terminating this Agreement shall be required to be sent to the attorneys representing such receiving Party (provided that the Party to which such notice is being sent included its attorney's address in Section 1). Notwithstanding the foregoing, ExteNet and Manager each reserve the right to modify or change their contact information set forth in Section 1 by providing notice to the other Party as otherwise provided in this section, with such new notice address being effective 15 days after receipt by the other Party.

**31. Relationship of Owner and Manager.** Owner is the owner of the Building which is the subject of this Agreement (through a Master Lease from its municipal financing entity, the West Valley City Building Authority). Owner has entered into a Management Agreement with WVE, Inc., parent company of Manager, pursuant to an

assignment of which agreement Manager is responsible for the day to day operation and management of the Building. Owner has delegated all authority to the Manager for the administration of this Agreement and all interactions with ExteNet with respect to the installation and maintenance of ExteNet's systems and the Distributed Network. All payments to be made by ExteNet under the terms of this Agreement shall be made to the Manager, as provided in more detail in Section 6, above. The Owner is a party to this Agreement for the purpose of granting certain rights to ExteNet as set forth in this Agreement and to provide its approval of this Agreement as required by the Management Agreement between the Owner and Manager's parent. Notwithstanding the foregoing, if Manager shall cease to be the manager of the Building, for any reason whatsoever, then ExteNet's rights shall be unimpaired, but Owner, as the owner of the Building, shall assume any and all rights and duties of the "Manager" as set forth in this Agreement, or may assign such rights and duties to a replacement manager.

### **32. Miscellaneous.**

(a) *Brokers Fees.* Manager, Owner and ExteNet each shall be responsible for any obligations or liability, contingent or otherwise, for brokerage or finder's fees or agent's commissions or other like payments arising out of such Party's dealings with third parties. Each Party agrees to indemnify, defend and hold the other Party harmless from and against any and all liability, damages, costs and expenses (including reasonable attorneys' fees incurred) in respect to such obligation or liability based in any way on any agreement, arrangement or understanding claimed to have been made by such Party with any third party, which indemnity shall survive the expiration or termination of this Agreement.

(b) *Authority.* Each Party hereby represents and warrants to the other that (i) all necessary corporate authorizations required for execution and performance of this Agreement by such Party have been obtained; (ii) that the officer or agent of such Party who executes this Agreement is duly authorized to execute same and bind the Party for which such person signs; and (iii) such Party has full right and authority to execute and enter into this Agreement and to perform the obligations imposed upon it without the consent of any other party not obtained.

(c) *Multiple Counterparts.* This Agreement may be executed in multiple counterparts, each counterpart of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.

(d) *Scanned or Electronically Reproduced Versions.* The Parties agree that a scanned or electronically reproduced copy or image of this Agreement, as executed, shall be deemed an original and may be introduced or submitted in any action or proceeding as a competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

(e) *Rules of Construction.* The terms of this Agreement shall be governed by and construed in accordance with the laws of the state in which the Building is located, without reference to its conflicts of laws principles. The pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other, as the context requires. "Include" and "including" and their derivatives shall be construed as illustrative but not limiting. References in this Agreement to sections shall refer to those sections of this Agreement unless the context expressly requires otherwise. Headings of sections are for convenience only and shall not be considered in construing the meaning of the contents of such sections. If any term, covenant, condition or provision of this Agreement is determined by a court of competent jurisdiction to be, to any extent, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by Applicable Law. If the day for performance of any act required under this Agreement falls on a Saturday, Sunday or holiday for which banking institutions in the state of Utah are generally closed, then the day for such performance, as the case may be, shall be the next following regular business day.

(f) *Entire Agreement.* This Agreement, including all exhibits hereto, constitutes the entire agreement between ExteNet, Manager and Owner and any modification to this Agreement or any exhibits hereto must be in writing, signed by authorized representatives of the Party to be charged and delivered to the other Party in order to be effective. There are no representations or understandings existing prior to the Effective Date between ExteNet, Manager and Owner which are not stated in this Agreement.

(g) *Attorneys' Fees.* Should either Party institute any legal proceedings against the other for breach or failure to perform any provision contained in this Agreement and prevail in such action, the non-prevailing Party shall in addition be liable for the costs of the prevailing Party, including its reasonable attorneys' fees at trial and through appeal.

(h) *Good Faith.* The Parties shall cooperate in good faith with each other to effectuate the purposes of this Agreement.



(i) *Strict Performance / Waiver.* A Party's failure to exercise its rights with respect to a breach of any term, covenant or condition contained in this Agreement, to insist on strict performance of any of the conditions or provisions in this Agreement, or to otherwise exercise any of such Party's rights hereunder shall not be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.

(j) *Force Majeure.* If a Party fails to fulfill any of its obligations under this Agreement within the time prescribed, and such failure is caused by, or materially contributed to by, a Force Majeure Event, then such failure shall be deemed not to be a breach of such Party's obligations, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances.

(k) *Confidentiality.* The Parties agree that the negotiations and terms and conditions of this Agreement are confidential and that the Owner and Manager and its Affiliates keep as confidential facts concerning the Building and its operations. Accordingly, the Parties agree that: (i) without the prior written consent of the non-disclosing party, the terms and conditions of this Agreement may not be disclosed to third parties; (ii) ExteNet shall not disclose information that it becomes aware of concerning the Building and its operations, except that any such information (whether described in the foregoing clause (i) or (ii)), may be disclosed (A) to its employees, directors, consultants, legal counsel, contractors and others on a need-to-know basis who, in the case of disclosure to each of the foregoing, shall be directed to treat as confidential any information so disclosed, (B) as may be required by Applicable Law or pursuant to a subpoena or court order or similar legal requirement, (C) by Owner or its Affiliates, to their respective actual and potential lenders, purchasers and others who may acquire an interest in the Building and/or the land on which the Building is situated, and (D) by ExteNet, to WSPs; (iii) pursuant to Section 63-2-304, Utah Code Annotated, ExteNet and the Manager hereby claim business confidentiality protection for the terms of this Agreement and for any records provided to the Owner pursuant to this Agreement. This claim of business confidentiality is based upon the following reasons: (A) Disclosure of the terms of this Agreement or records related to its performance by the Parties may cause unfair competitive injury to ExteNet and the Manager and will place ExteNet and the Manager at a competitive disadvantage with competing businesses, (B) Disclosure of the terms of this Agreement or any records related to the performance of this Agreement by the Parties may reveal trade secrets of ExteNet or the Manager.

Notwithstanding the foregoing, no obligation of confidentiality shall extend to any information of the disclosing Party which: (I) was publicly known at the time it was disclosed by the disclosing Party or thereafter becomes publicly known through no fault or breach of the aforesaid confidentiality obligations by the receiving Party; (II) was known to and recorded by the receiving Party prior to the disclosure by the disclosing Party; or (III) becomes known to the receiving Party from a source other than the disclosing Party.

IN WITNESS WHEREOF, each Party has executed this Agreement as of the respective dates set forth below.

**EXTENET SYSTEMS, INC.,**

a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Centennial Management Group, Inc.,** a Utah

corporation, as Manager of the Building

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**West Valley City,** a municipal corporation of the State of Utah; as Building Owner

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Date

The following Exhibits are attached to and incorporated into this Agreement:

- Exhibit 1: Location / Description of Head-End Area
- Exhibit 2: Rules and Regulations
- Exhibit 3: Miscellaneous Information

**Exhibit 1**

**Location / Description of Head-End Area**

[To be agreed by the parties.]

**Exhibit 2**

**Rules and Regulations**

*[To be supplied by Manager.]*

### **Exhibit 3**

#### **Miscellaneous Information**

1. Pursuant to Section 9(a), the following are the special access requirements:

Access may be granted by contacting the Manager's representative listed on page 1 of this Agreement. In non-emergency situations, the Manager will facilitate access as soon as is reasonably practical or at such later time as ExteNet may request.

2. Pursuant to Section 13, the following are the existing environmental issues affecting the Building which are known to Owner and reasonably could affect ExteNet in connection with its installation or operation of the Distributed Network:

None

3. Pursuant to Section 14(a), Building is owned by Owner:

\_\_\_\_\_ Yes                        X   No

- a. The land on which the Building is located is owned by the Owner. The Building is owned by the West Valley City Building Authority which is the municipal financing entity of Owner. Owner has possession of the Building pursuant to a Master Lease that was executed in connection with the issuance of its Lease Revenue Refunding Bonds, Series 2002A (the "**Bonds**"). The trustee for the Bonds is Zions First National Bank.

4. Pursuant to Section 18, Owner states that the following existing mortgages, deeds of trust and similar security documents encumber the Building:

The Indenture and other documents associated with the Bonds.

Item #:	_____
Fiscal Impact:	_____
Funding Source:	_____
Account #:	_____
Budget Opening Required:	_____

**ISSUE:**

A Resolution approving a franchise agreement with WirelessBeehive.com, LLC to construct and maintain a telecommunications network in the City.

**SYNOPSIS:**

This Franchise Agreement will allow WirelessBeehive to establish a telecommunications network in, under, along, over and across present and future rights-of-ways of the City.

**BACKGROUND:**

Applications for telecommunications networks in West Valley City are governed by Chapter 20-5 of the City Code. The franchise granted by this Agreement is for a 10 year period, with the option to renew for an additional 10 years with the same terms and conditions. Chapter 20-6 of the City Code permits the City to require all telecommunications providers to collect taxes from their customers and deposit them with the Utah State Tax Commission. This agreement memorializes this provision as well as acknowledging WirelessBeehive duty to secure permits from Public Works for any excavation or construction.

**RECOMMENDATION:**

It is recommended that the City Council approve this Resolution.

**WEST VALLEY CITY, UTAH**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION APPROVING A FRANCHISE  
AGREEMENT BETWEEN WIRELESSBEEHIVE.COM,  
LLC, AND WEST VALLEY CITY FOR A  
TELECOMMUNICATIONS NETWORK IN THE CITY.**

**WHEREAS**, WirelessBeehive.Com, LLC (herein “WirelessBeehive”) desires to provide voice, data or video transmission services within the City and in connection therewith establish a telecommunication network in, under, along, over and across present and future rights-of-way of the City; and

**WHEREAS**, Chapter 20-5 of the West Valley City Municipal Code governs the application and review process for telecommunications franchises in the City; and

**WHEREAS**, the City, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide WirelessBeehive a nonexclusive franchise to operate a telecommunications network in the City; and

**WHEREAS**, an agreement has been prepared for execution by and between the City and WirelessBeehive. The Agreement, a copy of which is attached hereto and entitled “Franchise Agreement” sets forth the rights, duties, and obligations of each of the parties with respect thereto; and

**WHEREAS**, the City Council of West Valley City, Utah, does hereby determine that it is in the best interest of the health, safety, and welfare of the citizens of West Valley City to authorize the execution of the Agreement with WirelessBeehive;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of West Valley City, Utah that the Agreement entitled, “Franchise Agreement” is hereby approved in substantially the form attached, and that the Mayor is hereby authorized to execute said Agreement for and on behalf of the City, subject to approval of the final form of the Agreement by the City Manager and the City Attorney’s Office.

**PASSED and APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**WEST VALLEY CITY**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY RECORDER**

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** (hereinafter "Agreement") is entered into by and between West Valley City (hereinafter "City"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 3600 Constitution Boulevard; West Valley City, Utah 84119, and WIRELESSBEEHIVE.COM, LLC (hereinafter "Provider"), a limited liability company organized under the laws of the State of UTAH with its principal offices at 2000 SUNSET RD LAKE POINT, UT 84074, (hereinafter "Party" individually and "Parties" collectively).

### WITNESSETH:

**WHEREAS**, the Provider desires to provide voice, data or video transmission services within the City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City; and

**WHEREAS**, the City has enacted Chapter 20-5 of the West Valley City Municipal Code (hereinafter "Telecommunications Rights-of-Way Ordinance"), which governs the application and review process for telecommunications franchises in the City; and

**WHEREAS**, the City has subsequently enacted Chapter 20-6 of the West Valley Municipal Code (hereinafter the "Mobile Telephone Service Revenue Act") which – pursuant to Utah law – permits the City to require all telecommunications providers to collect taxes from their customers and deposit them with the Utah State Tax Commission; and

**WHEREAS**, the City, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide the Provider a nonexclusive franchise to operate a telecommunications network in the City.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements of the Parties contained herein, and for other good and valuable consideration, the City and the Provider agree as follows:

### **ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE**

1.1 **Agreement.** Upon approval by the City Council and execution by the Parties, this Agreement shall be deemed to constitute a contract by and between the City and the Provider.

1.2 **Ordinance.** The City has adopted The Telecommunications Rights-of-Way Ordinance and Mobile Telephone Service Revenue Act (collectively referred to as the "Ordinances"), which are incorporated herein by reference and attached as Exhibit A. The Provider acknowledges that it has had an opportunity to read and become familiar with the



Ordinances. The Parties agree that the provisions and requirements of the Ordinances are material terms of this Agreement, and that each Party hereby agrees to be contractually bound to comply with the terms of the Ordinances. The definitions in the Ordinances shall apply herein unless a different meaning is indicated. Nothing in this section shall be deemed to require the Provider to comply with any provision of the Ordinances which is determined to be unlawful or beyond the City's authority.

1.3 **Ordinance Amendments.** The City reserves the right to amend the Ordinances at any time. The City shall give the Provider notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between the Provider's rights and obligations under the Ordinances as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the Provider agrees to comply with any such amendments.

1.4 **Franchise Description.** The telecommunications franchise provided hereby shall confer upon the Provider the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in the present and future public rights-of-way in the City. The franchise does not grant to the Provider the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the Provider from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the Provider's system within the City for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 **Licenses.** The Provider acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Ordinances.

1.6 **Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither Party is authorized to, nor shall either Party act toward third persons or the public in a manner that would indicate any such relationship with each other.

## **ARTICLE 2. FRANCHISE FEE**

2.1 **Telecommunications License Tax.** Pursuant to Utah law, the fee required under this Agreement is satisfied by the Provider's collection and proper deposit of Telecommunications License Tax with the Utah State Tax Commission. The Provider shall collect and deposit with the Utah State Tax Commission Municipal Telecommunications License Tax at the rate and in the manner currently provided by Utah Code Ann. § 10-1-401 et seq., less any business license fee or business license tax imposed by the City.

2.2 **Equal Treatment.** City agrees that the fees imposed in the City are imposed on a competitively neutral basis, and that any competing third party shall also be subject to fees at the same rate.

2.3 **Additional Fees.** The payment of the Franchise Fee does not prevent the City from requiring the payment of other fees imposed in accordance with Utah Code Ann. § 72-7-102, relating to management costs caused by Provider's activities in the right-of-way.

### **ARTICLE 3. TERM AND RENEWAL**

3.1 **Term and Renewal.** The franchise granted to Provider shall be for a period of ten (10) years commencing on the first day of the month following this Agreement, unless this franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein shall be renewed by the Provider upon the same terms and conditions as contained in this Agreement for an additional ten (10) year term, unless the Provider gives written notice to the City's representative designated herein written notice of the Provider's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 **Rights of Provider Upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture, the Provider shall have the right to remove from the rights-of-way any and all of its system, but in such event, it shall be the duty of the Provider, immediately upon such removal, to restore the rights-of way from which such system is removed to as good condition as the same was before the removal was effected.

### **ARTICLE 4. PUBLIC USE RIGHTS**

4.1 **City Uses of Poles and Overhead Structures.** The City shall have the right, without cost, to use all poles owned by the Provider within the City for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the City shall be for activities owned, operated or used by the City for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 **Limitations on Use Rights.** Nothing in this Agreement shall be construed to require the Provider to increase pole capacity, alter the manner in which the Provider attaches equipment to the poles, or alter the manner in which the Provider operates and maintains its equipment. Such City attachments shall be installed and maintained in accordance with the reasonable requirements of the Provider and the current National Electrical Safety Code. City attachments shall be attached or installed only after written approval by the Provider, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 **Maintenance of City Facilities.** The City's use rights shall also be subject to the parties reaching an agreement regarding the City's maintenance of the City attachments.

## **ARTICLE 5. POLICE POWERS**

5.1 The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

## **ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY**

6.1 **Meet to Confer.** The Provider and the City recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the Provider conducts its business and the way the City regulates the business. In recognition of the present state of uncertainty respecting these matters, the Provider and the City each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

6.2 **Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the Ordinances is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the Parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the rights-of-way in a manner similar to that provided in this Agreement, the Ordinances, and the City's excavation ordinance. For the Provider, "material consideration" is its ability to use the rights-of-way for telecommunication purposes in a manner similar to that provided in this Agreement, the Ordinances, and the City's Excavation Ordinance.

## **ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES**

7.1 **Grounds for Termination.** The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) The Provider fails to make timely payments of the Franchise Fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the City of such failure;
- (b) The Provider, by act or omission, materially violates a material duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Provider notice of such determination, the Provider, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Provider; or
- (c) The Provider becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Provider within sixty (60) days.

7.2 **Reserved Rights.** Nothing contained herein shall be deemed to preclude the Provider from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

7.3 **Remedies at Law.** In the event the Provider or the City fails to fulfill any of its respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have



the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a Party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a Party hereto).

## ARTICLE 8. PARTIES DESIGNEES

8.1 **City Designee and Address.** The West Valley City Public Works Director or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Ordinances, all notices from the Provider to the City pursuant to or concerning this Agreement, shall be delivered to the City's representative at 3600 Constitution Boulevard, West Valley City, Utah 84119, or such other officer and address as the City may designate by written notice to the Provider.

8.2 **Provider Designee and Address.** The Provider's Vice President of Administration or his/her designee(s) shall serve as the Provider's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Ordinances, all notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to Provider's headquarter offices at 2000 SUNSET RD LAKE POINT, UT 84074,  
and such other office as the Provider may designate by written notice to the City.

8.3 **Failure of Designee.** The failure or omission of the City's or Provider's representative to act shall not constitute any waiver or estoppel by the City or Provider.

## ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 **Insurance.** Prior to commencing operations in the City pursuant to this Agreement, the Provider shall furnish to the City evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the Provider is effectively self-insured if the Provider has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the Provider from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage reasonably acceptable to the City.

9.2 **Indemnification.** The Provider agrees to indemnify, defend and hold the City harmless from and against any and all claims, demands, liens, and all liability or damage of

whatsoever kind on account of or arising from the Provider's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the City in defense of such claims. The City shall promptly give written notice to the Provider of any claim, demand, lien, liability, or damage with respect to which the City seeks indemnification and, unless in the City's judgment a conflict of interest may exist between the Parties with respect to the claim, demand, lien, liability, or damage, the City shall permit the Provider to assume the defense of such with counsel of the Provider's choosing, unless the City reasonably objects such counsel. Notwithstanding any provision of this section to the contrary, the Provider shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the City.

## **ARTICLE 10. GENERAL PROVISIONS.**

10.1 **Binding Agreement.** The Parties represent that (a) when executed by their respective Parties, this Agreement shall constitute legal and binding obligations of the Parties; and (b) that each Party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the Parties.

10.2 **Utah Law.** This Agreement shall be interpreted pursuant to Utah law.

10.3 **Time of Essence.** Time shall be of the essence of this Agreement.

10.4 **Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.5 **No Presumption.** All Parties have participated in preparing this Agreement. Therefore, the Parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting Party.

10.6 **Entire Agreement and Amendments.** This Agreement and all attachments hereto constitute and represent the entire agreement and understanding between the parties hereto and replaces any previous agreement, understanding or negotiation between the parties with respect to the subject matter hereof, and may be modified or amended, supplemented, or changed only by the written agreement of the parties, including the formal approval of the City Council. No oral modifications or amendments shall be effective.

SIGNED and ENTERED INTO this \_\_\_\_ day of \_\_\_\_\_, 2014.

“City”

West Valley City

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

APPROVAL AS TO FORM:

\_\_\_\_\_  
City Attorney

“Provider”

WIRELESSBEEHIVE.COM, LLC, a \_\_\_\_\_  
limited liability company

By: [Signature]  
Its: PRESIDENT

STATE OF UTAH )  
COUNTY OF Tooele )  
:ss.

On the 11 day of March, 2015 personally appeared before me  
Scott Wilson, who being by me duly sworn did say that he or she is the  
President of Wirelessbeehive.com LLC,  
and that the foregoing instrument was signed on behalf of said company by authority of its board of  
directors and/or its company documents; and he or she acknowledged to me that said company executed  
the same.



[Signature]  
Notary Public 9420 Southwest Dr  
Residing at: Tooele, UT 84074  
My Commission Expires: 3/21/2018

**Item:** \_\_\_\_\_

**Fiscal Impact:** \$182,560.00

**Funding Source:** Lease Proceeds

**Account #:** \_\_\_\_\_

**Budget Opening Required:** ☒

**ISSUE:**

A resolution of the governing body of West Valley City, Utah, authorizing the execution and delivery of a Master Tax-Exempt Lease/Purchase Agreement Schedule, with US BANCORP Government Leasing and Finance, Inc. and related documents with respect to a lease for the purchase of replacement Police and Fire radio equipment authorizing the executing and delivery of documents required in connection therewith; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution.

**SYNOPSIS:**

Lease Agreement for the purchase of replacement Police and Fire radio equipment with US BANCORP Government Leasing and Finance.

**BACKGROUND:**

The City has a need to replace a significant amount of Police and Fire radio communications equipment. Hand held portable radios and mobile radios will be purchased from Motorola Solutions Inc. Vendor and equipment are on the Utah State Purchasing Contract #AR-1884. Favorable terms have been negotiated with US BANCORP Government Leasing and Finance, Inc. to initiate a lease purchase transaction. Terms of the lease will expire in advance of the 15 year useful life of the assets acquired. The City has obtained a rate of 2.150% for 7 years.

Payments for this equipment will be 28 quarterly payments in advance at \$6,520.00 starting April 15, 2015, totaling \$182,560.00. Principal will be \$170,000.00 and interest costs will be \$12,560.00.

**RECOMMENDATION:**

Approval of this engagement agreement

**SUBMITTED BY:**

Jim Welch, Finance Director



**WEST VALLEY CITY, UTAH**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A MASTER TAX-EXEMPT LEASE/PURCHASE AGREEMENT AND PROPERTY SCHEDULE NO. 1 WITH US BANCORP GOVERNMENT LEASING AND FINANCING, INC. WITH RESPECT TO A LEASE FOR THE PURCHASE AND REPLACEMENT OF POLICE AND FIRE RADIO EQUIPMENT.**

**WHEREAS**, the City desires to purchase radio equipment for the Police and Fire Departments (herein "Equipment"); and

**WHEREAS**, favorable terms have been negotiated with US BANCORP Government Leasing and Finance, Inc. (herein "BANCORP") to initiate a lease purchase transaction; and

**WHEREAS**, the City desires to enter in a Master Lease Agreement and Property Schedule for the purchase of the Equipment; and

**WHEREAS**, an Agreement has been prepared for execution by and between the City and BANCORP, entitled, "Master Tax-Exempt Lease/Purchase Agreement", which sets forth the rights, duties, and obligations of each of the parties thereto; and

**WHEREAS**, the City Council of West Valley City, Utah, does hereby determine that it is in the best interest of the health, safety, and welfare of the citizens of West Valley City to approve the Agreement with BANCORP;

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of West Valley City, Utah, that

1. The Agreement entitled, "Master Tax-Exempt Lease/Purchase Agreement" is hereby approved and the Mayor is hereby authorized to execute said Agreement for and on behalf of West Valley City, subject to approval of the final form of the document by the City Manager and the City Attorney's Office.
2. Schedule No. 1 for the purchase of Police and Fire radios is hereby approved and the Mayor is hereby authorized to execute said Schedule No. 1 for and on behalf of West Valley City, subject to approval of the final form of the document by the City Manager and the City Attorney's Office.

**PASSED, APPROVED, and MADE EFFECTIVE** this \_\_\_\_\_ day of \_\_\_\_\_,  
2015.

WEST VALLEY CITY

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
CITY RECORDER

## DOCUMENT CHECKLIST

PLEASE EXECUTE TWO (2) ORIGINALS OF ALL DOCUMENTS  
\*\*NO FRONT AND BACK COPIES, PLEASE\*\*

RETURN ALL ORIGINALS TO:  
U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC.  
LISA ALBRECHT  
950 17<sup>TH</sup> STREET, 7<sup>TH</sup> FLOOR  
DENVER, CO 80202  
303-585-4077

- **Master Tax-Exempt Lease Purchase Agreement** – This document must be executed in the presence of a witness/attestor. The attesting witness does not have to be a notary, just present at the time of execution.
- **Property Schedule No. 1** - This document must be executed in the presence of a witness/attestor. The attesting witness does not have to be a notary, just present at the time of execution.
- **Property Description and Payment Schedule – Exhibit 1**
- **Lessee's Counsel's Opinion – Exhibit 2.** This exhibit will need to be executed by your attorney, dated and placed on their letterhead. Your attorney will likely want to review the agreement prior to executing this opinion.
- **Lessee's Certificate – Exhibit 3.** 1) Please fill in the person's title who will be executing the certificate in the first paragraph (note: the person who signs this exhibit cannot be the same person as the executing official(s) for all other documents); 2) Please fill in the date that the governing body met in Line 1; 3) In the middle set of boxes, please print the name of the executing official(s) in the far left box, print their title(s) in the middle box and have the executing official(s) sign the line in the far right hand box; 4) Include in your return package a copy of the board minutes or resolution for our files; and 5) The exhibit should be executed by someone other than the executing official(s) named in the center box.
- **Payment of Proceeds Instructions – Exhibit 4.** This is for the vendor payment information. If more than one vendor is being paid please make copies of this exhibit and fill out as many as are needed.
- **Acceptance Certificate – Exhibit 5.** The date that all equipment is delivered, installed and accepted is the date that should be placed on the "DATE" line. If moneys are being deposited into escrow this exhibit should be held and returned with the final disbursement from the escrow account.
- **Bank Qualification and Arbitrage Rebate – Exhibit 6.**
- **Insurance Authorization and Verification** – To be filled out by the Lessee and sent to your insurance carrier. A valid insurance certificate, or self-insurance letter if the Lessee self-insures, is required prior to funding.
- **Notification of Tax Treatment** – Please provide your State of Sales/Use tax Exemption Certificate.
- **Form 8038-G** – Blank form provided to Lessee. Please consult your local legal/bond counsel to fill out.
- **Escrow Agreement** – This document needs to be executed by the Executing Official defined in the Lessee's Certificate – Exhibit 3.
  - **Investment Direction Letter – Exhibit 1.** This document needs to be executed by the Executing Official.
  - **Schedule of Fees – Exhibit 2.**
  - **Requisition Request – Exhibit 3.** This document should be retained by Lessee and utilized to request disbursements from the escrow account. Please make copies and fill out as many as are needed.
  - **Acceptance Certificate - Exhibit 4.** This document should be retained by Lessee and provided to Lessor once all the proceeds have been disbursed from the escrow account.
  - **Class Action Negative Consent Letter – Exhibit 6.**
  - **IRS Form W-9.** This document should be retained by Lessee and submitted with the Requisition Request(s) for each vendor being paid. Please make copies and fill out as many as are needed.
- **Invoice for First Payment** - The first payment must be received for funding to occur.

# Master Tax-Exempt Lease/Purchase Agreement

Between: U.S. Bancorp Government Leasing and Finance, Inc. (the "Lessor")  
13010 SW 68th Parkway, Suite 100  
Portland, OR 97223

And: West Valley City, Utah (the "Lessee")  
3600 Constitution Blvd  
West Valley City, Utah 84119  
Attention: James Welch  
Telephone: 801-963-3235

Dated: March 30, 2015

## ARTICLE I DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"**Agreement**" means this Master Tax-Exempt Lease/Purchase Agreement, including all exhibits and schedules attached hereto.

"**Code**" is defined in Section 3.01(f).

"**Commencement Date**" is the date when the term of a Property Schedule and Lessee's obligation to pay rent thereunder commences, which date shall be set forth in such Property Schedule.

"**Event of Default**" is defined in Section 13.01.

"**Lease Payments**" means the Lease Payments payable by Lessee under Article VI of this Agreement and each Property Schedule, as set forth in each Property Schedule.

"**Lease Payment Dates**" means the Lease Payment dates for the Lease Payments as set forth in each Property Schedule.

"**Lease Term**" means, with respect to a Property Schedule, the Original Term and all Renewal Terms. The Lease Term for each Property Schedule executed hereunder shall be set forth in such Property Schedule, as provided in Section 4.02.

"**Lessee**" means the entity identified as such in the first paragraph hereof, and its permitted successors and assigns.

"**Lessor**" means the entity identified as such in the first paragraph hereof, and its successors and assigns.

"**Nonappropriation Event**" is defined in Section 6.06.

"**Original Term**" means, with respect to a Property Schedule, the period from the Commencement Date until the end of the budget year of Lessee in effect at the Commencement Date.

"**Property**" means, collectively, the property lease/purchased pursuant to this Agreement, and with respect to each Property Schedule, the property described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

"**Property Schedule**" means a Property Schedule in the form attached hereto for Property Schedule 1. Subsequent Property Schedules pursuant to this Agreement shall be numbered consecutively, beginning with Property Schedule 2.

"**Purchase Price**" means the amount that Lessee may, in its discretion, pay to Lessor to purchase the Property under a Property Schedule, as provided in Section 11.01 and as set forth in the Property Schedule.

"**Renewal Terms**" means the renewal terms of a Property Schedule, each having a duration of one year and a term coextensive with Lessee's budget year.

"**State**" means the state where Lessee is located.

"**Vendor**" means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor from whom Lessor or Lessee purchased or is purchasing all or any portion of the Property.

## ARTICLE II

**2.01 Property Schedules Separate Financings.** Each Property Schedule executed and delivered under this Agreement shall be a separate financing, distinct from other Property Schedules. Without limiting the foregoing, upon the occurrence of an Event of Default or a Nonappropriation Event with respect to a Property Schedule, Lessor shall have the rights and remedies specified herein with respect to the Property financed and the Lease Payments payable under such Property Schedule, and except as expressly provided in Section 12.02 below, Lessor shall have no rights or remedies with respect to Property financed or Lease Payments payable under any other Property Schedules unless an Event of Default or Nonappropriation Event has also occurred under such other Property Schedules.

## ARTICLE III

**3.01 Covenants of Lessee.** As of the Commencement Date for each Property Schedule executed and delivered hereunder, Lessee shall be deemed to represent, covenant and warrant for the benefit of Lessor as follows:

- (a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Property Schedule and the transactions contemplated thereby and to perform all of its obligations thereunder.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Lessee should merge with another entity under the laws of the State, Lessee agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Lessee's rights and shall assume Lessee's obligations hereunder.
- (c) Lessee has been duly authorized to execute and deliver this Agreement and the Property Schedule by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Property Schedule, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the

Property Schedule and the acquisition by Lessee of the Property thereunder. On or before the Commencement Date for the Property Schedule, Lessee shall cause to be delivered an opinion of counsel in substantially the form attached to the form of the Property Schedule as Exhibit 2.

- (d) During the Lease Term for the Property Schedule, the Property thereunder will perform and will be used by Lessee only for the purpose of performing essential governmental uses and public functions within the permissible scope of Lessee's authority.
- (e) Lessee will provide Lessor with current financial statements, budgets and proof of appropriation for the ensuing budget year and other financial information relating to the ability of Lessee to continue this Agreement and the Property Schedule in such form and containing such information as may be requested by Lessor.
- (f) Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Lease Payments under the Property Schedule and will not use or permit the use of the Property in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that it will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Property Schedule to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Property Schedule.
- (g) The execution, delivery and performance of this Agreement and the Property Schedule and compliance with the provisions hereof and thereof by Lessee does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Lessee is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Lessee or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Lessee or to which it is subject.
- (h) Lessee's exact legal name is as set forth on the first page of this Agreement. Lessee will not change its legal name in any respect without giving thirty (30) days prior notice to Lessor.

#### **ARTICLE IV**

**4.01 Lease of Property.** On the Commencement Date of each Property Schedule executed hereunder, Lessor will be deemed to demise, lease and let to Lessee, and Lessee will be deemed to rent, lease and hire from Lessor, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule, for the Lease Term set forth in such Property Schedule.

**4.02 Lease Term.** The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate upon payment of the final Lease Payment set forth in such Property Schedule and the exercise of the Purchase Option described in Section 11.01, unless terminated sooner pursuant to this Agreement or the Property Schedule.

**4.03 Delivery, Installation and Acceptance of Property.** Lessee shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Property Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement or trust agreement for the acquisition of the Property, such funds shall be disbursed as provided therein. When the Property described in such Property Schedule is delivered, installed and accepted as to Lessee's specifications, Lessee shall immediately accept the Property and evidence said acceptance by executing and delivering to Lessor the Acceptance Certificate substantially in the form attached to the Property Schedule.

#### **ARTICLE V**

**5.01 Enjoyment of Property.** Lessee shall during the Lease Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Lessor shall not interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under the subject Property Schedule.

**5.02 Location; Inspection.** The Property will be initially located or based at the location specified in the applicable Property Schedule. Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Property.

#### **ARTICLE VI**

**6.01 Lease Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of Lessee. Upon the appropriation of Lease Payments for a fiscal year, the Lease Payments for said fiscal year, and only the Lease Payments for said current fiscal year, shall be a binding obligation of Lessee; provided that such obligation shall not include a pledge of the taxing power of Lessee.

**6.02 Payment of Lease Payments.** Lessee shall promptly pay Lease Payments under each Property Schedule, exclusively from legally available funds, in lawful money of the United States of America, to Lessor in such amounts and on such dates as described in the applicable Property Schedule, at Lessor's address set forth on the first page of this Agreement, unless Lessor instructs Lessee otherwise. Lessee shall pay Lessor a charge on any delinquent Lease Payments under a Property Schedule in an amount sufficient to cover all additional costs and expenses incurred by Lessor from such delinquent Lease Payment. In addition, Lessee shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Lease Payments and interest on said delinquent amounts from the date such amounts were due until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

**6.03 Interest Component.** A portion of each Lease Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Lease Payment thereunder during the Lease Term.

**6.04 Lease Payments to be Unconditional.** SUBJECT TO SECTION 6.06, THE OBLIGATIONS OF LESSEE TO PAY THE LEASE PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT LESSEE'S RIGHTS OR ACTIONS AGAINST ANY VENDOR AS PROVIDED IN SECTION 10.02.

**6.05 Continuation of Lease by Lessee.** Lessee intends to continue all Property Schedules entered into pursuant to this Agreement and to pay the Lease Payments thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Lease Payments during the term of all Property Schedules can be obtained. Lessee agrees that its staff will provide during the budgeting process for each budget year to the governing body of Lessee notification of any Lease Payments due under the Property Schedules during the following budget year. Notwithstanding this covenant, if Lessee fails to appropriate the Lease Payments for a Property Schedule pursuant to Section 6.06, such Property Schedule shall terminate at the end of the then current Original Term or Renewal Term. Although Lessee has made this covenant, in the event that it fails to provide such notice, no remedy is provided and Lessee shall not be liable for any damages for its failure to so comply.

**6.06 Nonappropriation.** If during the then current Original Term or Renewal Term, sufficient funds are not appropriated to make Lease Payments required under a Property Schedule for the following fiscal year, Lessee shall be deemed to not have renewed such Property Schedule for the following fiscal year and the Property Schedule shall terminate at the end of the then current Original Term or Renewal Term and Lessee shall not be obligated to make Lease Payments under said Property Schedule beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (a "Nonappropriation Event") Lessee shall, no later than the end of the fiscal year for which Lease Payments have been appropriated, deliver possession of the Property under said Property Schedule to Lessor. If Lessee fails to deliver possession of the Property to Lessor upon termination of said Property Schedule by reason of a Nonappropriation Event, the termination shall nevertheless be effective but Lessee shall be responsible for the payment of damages in an amount equal to the portion of Lease Payments thereafter coming due that is attributable to the number of days after the termination during which the Lessee fails to deliver possession and for any other loss suffered by Lessor as a result of Lessee's failure to deliver

possession as required. In addition, Lessor may, by written instructions to any escrow agent who is holding proceeds of the Property Schedule, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to Lessee's obligations under the Property Schedule and this Agreement. Lessee shall notify Lessor in writing within seven (7) days after the failure of the Lessee to appropriate funds sufficient for the payment of the Lease Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee.

**6.07 Defeasance of Lease Payments.** Lessee may at any time irrevocably deposit in escrow with a defeasance escrow agent for the purpose of paying all of the principal component and interest component accruing under a Property Schedule, a sum of cash and non-callable securities consisting of direct obligations of, or obligations the principal of an interest on which are unconditionally guaranteed by, the United States of America or any agency or instrumentality thereof, in such aggregate amount, bearing interest at such rates and maturing on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Lessor in the Property under said Property Schedule shall terminate. Lessee shall cause such investment to comply with the requirements of federal tax law so that the exclusion from gross income of the interest component of Lease Payments on said Property Schedule is not adversely affected.

#### **ARTICLE VII**

**7.01 Title to the Property.** Upon acceptance of the Property by Lessee and unless otherwise required by the laws of the State, title to the Property shall vest in Lessee, subject to Lessor's interests under the applicable Property Schedule and this Agreement.

**7.02 Personal Property.** The Property is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Property from any party having an interest in any such real estate or building.

**7.03 Security Interest.** To the extent permitted by law and to secure the performance of all of Lessee's obligations under this Agreement with respect to a Property Schedule, including without limitation all Property Schedules now existing are hereafter executed, Lessee grants to Lessor, for the benefit of Lessor and its successors and assigns, a security interest constituting a first lien on Lessee's interest in all of the Property under the Property Schedule, whether now owned or hereafter acquired, all additions, attachments, alterations and accessions to the Property, all substitutions and replacements for the Property, and on any proceeds of any of the foregoing, including insurance proceeds. Lessee shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Lessor, which Lessor deems necessary or appropriate to establish, maintain and perfect a security interest in the Property in favor of Lessor and its successors and assigns. Lessee hereby authorizes Lessor to file all financing statements which Lessor deems necessary or appropriate to establish, maintain and perfect such security interest.

#### **ARTICLE VIII**

**8.01 Maintenance of Property by Lessee.** Lessee shall keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and claims, other than those created by this Agreement. Lessee shall have sole responsibility to maintain and repair the Property. Should Lessee fail to maintain, preserve and keep the Property in good repair and working order and in accordance with manufacturer's specifications, and if requested by Lessor, Lessee will enter into maintenance contracts for the Property in form approved by Lessor and with approved providers.

**8.02 Liens, Taxes, Other Governmental Charges and Utility Charges.** Lessee shall keep the Property free of all levies, liens and encumbrances, except for the interest of Lessor under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Property will be exempt from all property taxes. The Lease Payments payable by Lessee under this Agreement and the Property Schedules hereunder have been established to reflect the savings resulting from this exemption from taxation. Lessee will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Lessee shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Property.

**8.03 Insurance.** At its own expense, Lessee shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount equal to at least the outstanding principal component of Lease Payments, and (b) liability insurance that protects Lessor from liability in all events in an amount reasonably acceptable to Lessor, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that Lessee may self-insure against all such risks. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State. All such liability insurance shall name Lessor as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Lessor and Lessee as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Lessor and Lessee at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Lessor's prior written consent. Lessee shall furnish to Lessor, on or before the Commencement Date for each Property Schedule, and thereafter at Lessor's request, certificates evidencing such coverage, or, if Lessee self-insures, a written description of its self-insurance program together with a certification from Lessee's risk manager or insurance agent or consultant to the effect that Lessee's self-insurance program provides adequate coverage against the risks listed above.

**8.04 Advances.** In the event Lessee shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term for the applicable Property Schedule and shall be due and payable on the next Lease Payment Date and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

#### **ARTICLE IX**

**9.01 Damage or Destruction.** If (a) the Property under a Property Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Property Schedule or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessor and Lessee will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, unless Lessee shall have exercised its right to defease the Property Schedule as provided herein, or unless Lessee shall have exercised its option to purchase Lessor's interest in the Property if the Property Schedule so provides. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee. For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

**9.02 Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01, Lessee shall (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Section 6.02, or (b) defease the Property Schedule pursuant to Section 6.07, or (c) exercise its option to purchase Lessor's interest in the Property pursuant to the optional purchase provisions of the Property Schedule, if any. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance or purchase may be retained by Lessee.

## ARTICLE X

**10.01 Disclaimer of Warranties.** LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO LESSEE "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE. Lessee acknowledges that it has made (or will make) the selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor. Lessee understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Lessor, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

**10.02 Vendor's Warranties.** Lessor hereby irrevocably assigns to Lessee all rights that Lessor may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor of the Property.

**10.03 Use of the Property.** Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Lessee agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Property or its interest or rights under this Agreement. Lessee shall promptly notify Lessor in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

**10.04 Modifications.** Subject to the provisions of this Section, Lessee shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Property and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Property immediately prior to the making of such alterations, additions, modifications and improvements. Lessee shall, at its own expense, make such alterations, additions, modifications and improvements to the Property as may be required from time to time by applicable law or by any governmental authority.

## ARTICLE XI

**11.01 Option to Purchase.** Lessee shall have the option to purchase Lessor's entire interest in all of the Property subject to a Property Schedule and to terminate any restrictions herein on the Property under such Property Schedule on the last day of the Lease Term for a Property Schedule, if the Property Schedule is still in effect on such day, upon payment in full of the Lease Payments due thereunder plus payment of One (1) Dollar to Lessor. Upon exercise of the purchase option as set forth in this Section 11.01 and payment of the purchase price under the applicable Property Schedule, and performance by Lessee of all other terms, conditions and provisions hereof, Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably require to evidence the transfer, without warranty by or recourse to Lessor, of all of Lessor's right, title and interest in and to the Property subject to such Property Schedule to Lessee.

**11.02 Option to Prepay.** Lessee shall have the option to prepay in whole the Lease Payments due under a Property Schedule, but only if the Property Schedule so provides, and on the terms set forth in the Property Schedule. Lessee shall give written notice to Lessor of its intent to purchase Lessor's interest in the Property at least sixty (60) days prior to the last day of the Lease Term for applicable Property Schedule.

## ARTICLE XII

**12.01 Assignment by Lessor.** Lessor's right, title and interest in, to and under each Property Schedule and the Property under such Property Schedule may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in this Agreement and the Property Schedules.

**12.02 Property Schedules Separate Financings.** Assignees of the Lessor's rights in one Property Schedule shall have no rights in any other Property Schedule unless such rights have been separately assigned.

**12.03 Assignment and Subleasing by Lessee.** NONE OF LESSEE'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER THIS AGREEMENT AND IN THE PROPERTY MAY BE ASSIGNED, SUBLEASED OR ENCUMBERED BY LESSEE FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR.

**12.04 Release and Indemnification Covenants.** To the extent permitted by applicable law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest (collectively, "Losses") arising out of or resulting from the entering into this Agreement, any Property Schedules hereunder, the ownership of any item of the Property, the loss of federal tax exemption of the interest on any of the Property Schedules, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury to or death of any person; provided, however, that Lessee shall not be required to indemnify Lessor for Losses arising out of or resulting from Lessor's own willful or negligent conduct, or for Losses arising out of or resulting from Lessor's preparation of disclosure material relating to certificates of participation in this Agreement and any Property Schedule (other than disclosure material provided to Lessor by Lessee). The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement, or the applicable Property Schedule, or the termination of the Lease Term for such Property Schedule for any reason.

## ARTICLE XIII

**13.01 Events of Default Defined.** Any of the following shall constitute an "Event of Default" under a Property Schedule:

- (a) Failure by Lessee to pay any Lease Payment under the Property Schedule or other payment required to be paid with respect thereto at the time specified therein;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Property Schedule, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Lessee in or pursuant to the Property Schedule or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an

answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

- (e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.01 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to perform its agreements under this Agreement and the Property Schedule (other than the obligations on the part of Lessee contained in Article VI hereof) Lessee shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

A Nonappropriation Event is not an Event of Default.

**13.02 Remedies on Default.** Whenever any Event of Default exists with respect to a Property Schedule, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Without terminating the Property Schedule, and by written notice to Lessee, Lessor may declare all Lease Payments and other amounts payable by Lessee thereunder to the end of the then-current budget year of Lessee to be due, including without limitation delinquent Lease Payments under the Property Schedule from prior budget years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less;
- (b) Lessor may terminate the Property Schedule, may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Lessee, at Lessee's expense, to promptly return any or all of the Property to the possession of Lessor at such place within the United States as Lessor shall specify, and Lessor may thereafter dispose of the Property in accordance with Article 9 of the Uniform Commercial Code in effect in the State; provided, however, that any proceeds from the disposition of the property in excess of the sum required to (i) pay off any outstanding principal component of Lease Payments, (ii) pay any other amounts then due under the Property Schedule, and (iii) pay Lessor's costs and expenses associated with the disposition of the Property (including attorneys fees), shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto, and further provided that no deficiency shall be allowed against Lessee except with respect to unpaid costs and expenses incurred by Lessor in connection with the disposition of the Property;
- (c) By written notice to any escrow agent who is holding proceeds of the Property Schedule, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Property Schedule;
- (d) Lessor may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Property Schedule and this Agreement.

Notwithstanding the foregoing, if the proceeds are insufficient to pay items (i) to (iii) in Section 13.02(b) in whole, Lessee shall remain obligated after application of proceeds to items (i) and (ii), to pay in whole the amounts for item (iii).

**13.03 No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

**13.04 Costs and Attorney Fees.** Upon the occurrence of an Event of Default by Lessee in the performance of any term of this Agreement, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts due hereunder, all of Lessor's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid and shall bear interest at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

#### **ARTICLE XIV**

**14.01 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses as specified on the first page of this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Lessee.

**14.02 Arbitration Certificates.** Unless a separate Arbitration Certificate is delivered on the Commencement Date, Lessee shall be deemed to make the following representations and covenants as of the Commencement Date for each Property Schedule:

- (a) The estimated total costs, including taxes, freight, installation, and cost of issuance, of the Property under the Property Schedule will not be less than the total principal amount of the Lease Payments.
- (b) The Property under the Property Schedule has been ordered or is expected to be ordered within six months after the Commencement Date and the Property is expected to be delivered and installed, and the Vendor fully paid, within eighteen months from the Commencement Date. Lessee will pursue the completion of the Property and the expenditure of the net proceeds of the Property Schedule with due diligence.
- (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Lease Payments under the Property Schedule, or (ii) that may be used solely to prevent a default in the payment of the Lease Payments under the Property Schedule.
- (d) The Property under the Property Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Lease Payments under the Property Schedule.
- (e) There are no other obligations of Lessee which (i) are being sold within 15 days of the Commencement Date of the Property Schedule; (ii) are being sold pursuant to the same plan of financing as the Property Schedule; and (iii) are expected to be paid from substantially the same source of funds.
- (f) The officer or official who has executed the Property Schedule on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of the Property Schedule. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in herein are accurate and the expectations of Lessee set forth herein are reasonable.

**14.03 Further Assurances.** Lessee agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Lessor, to perfect, confirm, establish, reestablish, continue, or complete the interests of Lessor in this Agreement and the Property Schedules, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Property Schedules.

**14.04 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

**14.05 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**14.06 Waiver of Jury Trials.** Lessee and Lessor hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Lessor or Lessee in the negotiation, administration, performance or enforcement hereof.



14.07 **Amendments, Changes and Modifications.** This Agreement may be amended in writing by Lessor and Lessee to the extent the amendment or modification does not apply to outstanding Property Schedules at the time of such amendment or modification. The consent of all assignees shall be required to any amendment or modification before such amendment or modification shall be applicable to any outstanding Property Schedule.

14.08 **Execution in Counterparts.** This Agreement and the Property Schedules hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14.09 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

14.10 **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

<b>Lessor: U.S. Bancorp Government Leasing and Finance, Inc.</b>
By:
Name:
Title:

<b>Lessee: West Valley City, Utah</b>
By:
Name: Ron Bigelow
Title: Mayor

Attest:
By:
Name: Sheri McKendrick
Title: City Recorder

APPROVED AS TO FORM  
West Valley City Attorney's Office  
By: [Signature]  
Date: 3.11.15

## Property Schedule No. 1

### Master Tax-Exempt Lease/Purchase Agreement

This **Property Schedule No. 1** is entered into as of the Commencement Date set forth below, pursuant to that certain Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), dated as of March 30, 2015, between U.S. Bancorp Government Leasing and Finance, Inc., and West Valley City, Utah.

- Interpretation.** The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Lessee in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms not otherwise defined herein shall have the meanings provided in the Master Agreement.
- Commencement Date.** The Commencement Date for this Property Schedule is March 30, 2015.
- Property Description and Payment Schedule.** The Property subject to this Property Schedule is described in Exhibit 1 hereto. Lessee shall not remove such property from the locations set forth therein without giving prior written notice to Lessor. The Lease Payment Schedule for this Property Schedule is set forth in Exhibit 1.
- Opinion.** The Opinion of Lessee's Counsel is attached as Exhibit 2.
- Lessee's Certificate.** The Lessee's Certificate is attached as Exhibit 3.
- Proceeds.** Lessor shall disburse the proceeds of this Property Schedule in accordance with the instructions attached hereto as Exhibit 4.
- Acceptance Certificate.** The form of Acceptance Certificate is attached as Exhibit 5.
- Additional Purchase Option Provisions.** In addition to the Purchase Option provisions set forth in the Master Agreement, Lease Payments payable under this Property Schedule shall be subject to prepayment in whole at any time by payment of the applicable Termination Amount set forth in Exhibit 1 (Payment Schedule) and payment of all accrued and unpaid interest through the date of prepayment.
- Bank Qualification and Arbitrage Rebate.** Attached as Exhibit 6.
- Expiration.** Lessor, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Master Agreement (including this Property Schedule and all ancillary documents) is not received by Lessor at its place of business by April 25, 2015.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

<b>Lessor: U.S. Bancorp Government Leasing and Finance, Inc.</b>
By:
Name:
Title:

<b>Lessee: West Valley City, Utah</b>
By:
Name: Ron Bigelow
Title: Mayor

Attest:
By:
Name: Sheri McKendrick
Title: City Recorder

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

# EXHIBIT 1

## Property Description and Payment Schedule

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc. and West Valley City, Utah.

THE PROPERTY IS AS FOLLOWS: The Property as more fully described in Exhibit A incorporated herein by reference and attached hereto. It includes all replacements, parts, repairs, additions, accessions and accessories incorporated therein or affixed or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

### PROPERTY LOCATION:

3600 Constitution Blvd.

Address

West Valley City, UT 84119

City, State Zip Code

USE: Motorola Radios - This use is essential to the proper, efficient and economic functioning of Lessee or to the services that Lessee provides; and Lessee has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future.

### Lease Payment Schedule


Total Principal Amount: \$170,000.00

Payment No.	Due Date	Lease Payment	Principal Portion	Interest Portion	Termination Amount (After Making Payment for said Due Date)
1	30-Mar-2015	6,520.00	6,520.00	0.00	168,384.40
2	30-Jun-2015	6,520.00	5,643.17	876.83	162,571.93
3	30-Sep-2015	6,520.00	5,673.44	846.56	156,728.29
4	30-Dec-2015	6,520.00	5,703.87	816.13	150,853.30
5	30-Mar-2016	6,520.00	5,734.46	785.54	144,946.80
6	30-Jun-2016	6,520.00	5,765.22	754.78	139,008.62
7	30-Sep-2016	6,520.00	5,796.14	723.86	133,038.60
8	30-Dec-2016	6,520.00	5,827.23	692.77	127,036.55
9	30-Mar-2017	6,520.00	5,858.48	661.52	121,002.31
10	30-Jun-2017	6,520.00	5,889.91	630.09	114,935.70
11	30-Sep-2017	6,520.00	5,921.50	598.50	108,836.56
12	30-Dec-2017	6,520.00	5,953.26	566.74	102,704.71
13	30-Mar-2018	6,520.00	5,985.19	534.81	96,539.96
14	30-Jun-2018	6,520.00	6,017.29	502.71	90,342.16
15	30-Sep-2018	6,520.00	6,049.56	470.44	84,111.11
16	30-Dec-2018	6,520.00	6,082.01	437.99	77,846.64
17	30-Mar-2019	6,520.00	6,114.63	405.37	71,548.57
18	30-Jun-2019	6,520.00	6,147.43	372.57	65,216.72
19	30-Sep-2019	6,520.00	6,180.40	339.60	58,850.91
20	30-Dec-2019	6,520.00	6,213.55	306.45	52,450.96
21	30-Mar-2020	6,520.00	6,246.87	273.13	46,016.68

22	30-Jun-2020	6,520.00	6,280.38	239.62	39,547.89
23	30-Sep-2020	6,520.00	6,314.06	205.94	33,044.40
24	30-Dec-2020	6,520.00	6,347.93	172.07	26,506.04
25	30-Mar-2021	6,520.00	6,381.98	138.02	19,932.60
26	30-Jun-2021	6,520.00	6,416.21	103.79	13,323.91
27	30-Sep-2021	6,520.00	6,450.62	69.38	6,679.77
28	30-Dec-2021	6,520.00	6,485.22	34.78	0.00
<b>TOTALS</b>		<b>182,560.00</b>	<b>170,000.00</b>	<b>12,560.00</b>	

Interest Rate: 2.145%

<b>Lessee: West Valley City, Utah</b>
By:
Name: Ron Bigelow
Title: Mayor

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**  
 By:   
 Date: 3.11.15

## EXHIBIT A

### Property Description

---

<u>Item</u>	<u>Qty.</u>	<u>Description</u>
A50+		XTS2500 Portable 800 MHz Type III Includes: P25 Smartzone, 3600/9600 capability, Antenna, Impres Rapid Charger, Belt Clip, Impres LiIon 2700 mAh Battery,
B1-49		XTS2500 Portable 800 MHz Type III Includes: P25 Smartzone, 3600/9600 capability, Impres LiIon 2700 mAh Battery Antenna, Impres Rapid Charger Charger, Belt Clip,



**WEST VALLEY CITY**  
Unity • Pride • Progress

Office of the City Attorney

EXHIBIT 2

April 2, 2015

U.S. Bancorp Government Leasing and Finance, Inc.  
13010 SW 68<sup>th</sup> Parkway, Suite 100  
Portland, OR 97223

West Valley City, Utah  
3600 Constitution Boulevard  
West Valley City, UT 84119  
Attention: James Welch

RE: Property Schedule No. 1 to Master Tax-Exempt Lease/Purchase Agreement  
between U.S. Bancorp Government Leasing and Finance, Inc. and West Valley  
City, Utah

Ladies and Gentlemen:

We have acted as special counsel to West Valley City, Utah ("Lessee"), in connection with the Master Tax-Exempt Lease/Purchase Agreement, dated as of April 02, 2015 (the "Master Agreement"), between West Valley City, Utah, as lessee, and U.S. Bancorp Government Leasing and Finance, Inc. as lessor ("Lessor"), and the execution of Property Schedule No. 1 (the "Property Schedule") pursuant to the Master Agreement. We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

All capitalized items not otherwise defined herein shall have the meanings provided in the Master Lease Agreement and Property Schedule.

As to questions of fact material to our opinion, we have relied upon the representations of Lessee in the Master Agreement and the Property Schedule and in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion that, under existing law:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) the police power.

2. Lessee has all requisite power and authority to enter into the Master Agreement and the Property Schedule and to perform its obligations thereunder.

3. The execution, delivery and performance of the Master Agreement and the Property Schedule by Lessee has been duly authorized by all necessary action on the part of the Lessee.

4. All proceedings of Lessee and its governing body relating to the authorization and approval of the Master Agreement and the Property Schedule, the execution thereof and the transactions contemplated thereby have been conducted in accordance with all applicable open meeting laws and all other applicable state and federal laws.

5. Lessee has acquired or has arranged for the acquisition of the Property subject to the Property Schedule, and has entered into the Master Agreement and the Property Schedule, in compliance with all applicable public bidding laws.

6. Lessee has obtained all consents and approvals of other governmental authorities or agencies which may be required for the execution, delivery and performance by Lessee of the Master Agreement and the Property Schedule.

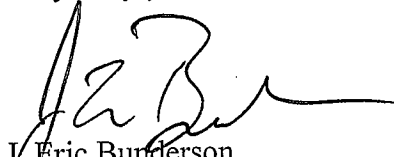
7. The Master Agreement and the Property Schedule have been duly executed and delivered by the Lessee and constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof, except insofar as the enforcement thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws of equitable principles of general application, or of application to municipalities or political subdivision such as the Lessee, affecting remedies or creditors' rights generally, and to the exercise of judicial discretion in appropriate cases.

8. As of the date hereof, based on such inquiry and investigation as we have deemed sufficient, no litigation is pending, (or, to our knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Master Agreement or the Property Schedule or of other agreements similar to the Master Agreement; (b) questioning the authority of Lessee to execute the Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal of or interest on, the Property

Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.

This opinion may be relied upon by Lessor, its successors and assigns, and any other legal counsel who provides an opinion with respect to the Property Schedule.

Very truly yours,



J. Eric Bunderson  
City Attorney



**EXHIBIT 3**

**Lessee's Certificate**

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc. and West Valley City, Utah.

The undersigned, being the duly elected, qualified and acting City Recorder of the West Valley City, Utah ("Lessee") do hereby certify, as of March 30, 2015, as follows:

1. Lessee did, at a meeting of the governing body of the Lessee held March 24, 2015 by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Property Schedule (the "Property Schedule") and the Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement") by the following named representative of Lessee, to wit:

NAME OF EXECUTING OFFICIAL	TITLE OF EXECUTING OFFICIAL	SIGNATURE OF EXECUTING OFFICIAL
Ron Bigelow	Mayor	
And/ Or		

2. The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.

3. The meeting(s) of the governing body of the Lessee at which the Master Agreement and the Property Schedule were approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Master Agreement and the Property Schedule and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Lessee relating to the authorization and delivery of Master Agreement and the Property Schedule have been: (a) held within the geographic boundaries of the Lessee; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Lessee, if any, and the laws of the State.

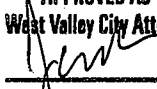
4. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default or a Nonappropriation Event (as such terms are defined in the Master Agreement) exists at the date hereof with respect to this Property Schedule or any other Property Schedules under the Master Agreement.

5. The acquisition of all of the Property under the Property Schedule has been duly authorized by the governing body of Lessee.

6. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Lease Payments scheduled to come due during the current budget year under the Property Schedule and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.

7. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Master Agreement or the Property Schedule or of other agreements similar to the Master Agreement; (b) questioning the authority of Lessee to execute the Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal or of interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.

West Valley City, Utah
By:
Title: City Recorder
<b>SIGNER MUST NOT BE THE SAME AS THE EXECUTING OFFICIAL(S) SHOWN ABOVE.</b>

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**  
By:   
Date: 3.11.15

**EXHIBIT 4**

**Payment of Proceeds Instructions**

U.S. Bancorp Government Leasing and Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, OR 97223

Re: Property Schedule No. 1 (the "Property Schedule") to Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc. ("Lessor") and West Valley City, Utah ("Lessee").

Ladies and Gentlemen:

The undersigned, an Authorized Representative of the Lessee hereby requests and authorizes Lessor to disburse the net proceeds of the Property Schedule as follows:

Name of Payee:

By Check: \_\_\_\_\_

If by check, Payee's Address:

By Wire Transfer:   X  

If by wire transfer, instructions as follows:

Pay to Bank Name:

Zions Bank,

Bank Address:

3540 S Constitution Blvd, West Valley City, UT 84119

Bank Phone #:

801-524-2261

For Account of:

Commercial Checking

Account No:

012118311

ABA No.:

124000054

**Lessee: West Valley City, Utah**

By:

Name: **Ron Bigelow**

Title: **Mayor**

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 5**

**Acceptance Certificate**

U.S. Bancorp Government Leasing and Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, OR 97223

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc. and West Valley City, Utah

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), the undersigned ("Lessee") hereby certifies and represents to, and agrees with, U.S. Bancorp Government Leasing and Finance, Inc. ("Lessor"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default or a Nonappropriation Event (as such terms are defined in the Master Agreement) exists at the date hereof.

Acceptance Date: \_\_\_\_\_

<b>Lessee: West Valley City, Utah</b>
By: _____
Name: Ron Bigelow
Title: Mayor

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**  
\_\_\_\_\_  
Date: 3.11.15

**EXHIBIT 6**

**Bank Qualification And Arbitrage Rebate**

U.S. Bancorp Government Leasing and Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, OR 97223

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc. and West Valley City, Utah

**Bank Qualified Tax-Exempt Obligation under Section 265**

Lessee hereby designates this Property Schedule as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. Lessee reasonably anticipates issuing tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds and including all tax-exempt obligations of subordinate entities of the Lessee) during the calendar year in which the Commencement Date of this Property Schedule falls, in an amount not exceeding \$10,000,000.

**Arbitrage Rebate**

**Eighteen Month Exception:**

Pursuant to Treasury Regulations Section 1.148-7(d), the gross proceeds of this Property Schedule will be expended for the governmental purposes for which this Property Schedule was entered into, as follows: at least 15% within six months after the Commencement Date, at least 60% within 12 months after the Commencement Date, and 100% within 18 months after the Commencement Date. If Lessee is unable to comply with Section 1.148-7(d) of the Treasury Regulations, Lessee shall compute rebatable arbitrage on this Agreement and pay rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final Lease Payment due under this Agreement.

<b>Lessee: West Valley City, Utah</b>
By:
Name: Ron Bigelow
Title: Mayor

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Language for UCC Financing Statements**

**Property Schedule No. 1**

SECURED PARTY: U.S. Bancorp Government Leasing and Finance, Inc.

DEBTOR: West Valley City, Utah

This financing statement covers all of Debtor's right, title and interest, whether now owned or hereafter acquired, in and to the equipment leased to Debtor under Property Schedule No. 1 dated March 30, 2015 to that certain Master Tax-Exempt Lease Purchase Agreement dated as of March 30, 2015, in each case between Debtor, as Lessee, and Secured Party, as Lessor, together with all accessions, substitutions and replacements thereto and therefore, and proceeds (cash and non-cash), including, without limitation, insurance proceeds, thereof, including without limiting, all equipment described on Exhibit A attached hereto and made a part hereof.

Debtor has no right to dispose of the equipment.

## INSURANCE AUTHORIZATION AND VERIFICATION

Date: April 02, 2015

Property Schedule No: 1

To: West Valley City, Utah (the "Lessee")

From: U.S. Bancorp Government Leasing and Finance, Inc. (the  
"Lessor")  
13010 SW 68th Parkway, Suite 100  
Portland, OR 97223  
Attn: Lisa Albrecht

**TO THE LESSEE:** In connection with the above-referenced Property Schedule, Lessor requires proof in the form of this document, executed by both Lessee\* and Lessee's agent, that Lessee's insurable interest in the financed property (the "Property") meets Lessor's requirements as follows, with coverage including, but not limited to, fire, extended coverage, vandalism, and theft:

Lessor, AND ITS SUCCESSORS AND ASSIGNS, shall be covered as both **ADDITIONAL INSURED** and **LENDER'S LOSS PAYEE** with regard to all equipment financed or leased by policy holder through or from Lessor. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Lessor and Lessee at least thirty (30) days in advance of such cancellation or modification.

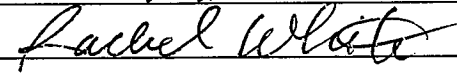
Lessee must carry **GENERAL LIABILITY** (and/or, for vehicles, Automobile Liability) in the amount of no less than \$1,000,000.00 (one million dollars).

Lessee must carry **PROPERTY Insurance** (or, for vehicles, Physical Damage Insurance) in an amount no less than the 'Insurable Value' \$170,000.00, with deductibles no more than \$10,000.00.

*\*Lessee: Please execute this form and return with your document package. Lessor will fax this form to your insurance agency for endorsement. In lieu of agent endorsement, Lessee's agency may submit insurance certificates demonstrating compliance with all requirements. If fully executed form (or Lessee-executed form plus certificates) is not provided within 15 days, we have the right to purchase such insurance at your expense. Should you have any questions, please contact Lisa Albrecht at 303-585-4077.*

By signing, Lessee authorizes the Agent named below: 1) to complete and return this form as indicated; and 2) to endorse the policy and subsequent renewals to reflect the required coverage as outlined above.

Agency/Agent:	Moreton & Company	Kery Oldroyd, VP
Address:	709 East South Temple	
	Salt Lake City, Utah 84102	
Phone/Fax:	801-531-1234	801-531-6117
Email:	koldroyd@moreton.com	

Lessee: West Valley City, Utah	
By:	
Name:	Rachel White
Title:	Risk Analyst

**TO THE AGENT:** In lieu of providing a certificate, please execute this form in the space below and promptly fax it to Lessor at 303-585-4732. This fully endorsed form shall serve as proof that Lessee's insurance meets the above requirements.

Agent hereby verifies that the above requirements have been met in regard to the Property listed below.

Print Name of Agency: X \_\_\_\_\_

By: X \_\_\_\_\_  
(Agent's Signature)

Print Name: X \_\_\_\_\_

Date: X \_\_\_\_\_

Insurable Value: \$170,000.00

ATTACHED: PROPERTY DESCRIPTION FOR PROPERTY SCHEDULE NO.: 1

## EXHIBIT A

### Property Description

---

<u>Item</u>	<u>Qty.</u>	<u>Description</u>
A50+		XTS2500 Portable 800 MHz Type III Includes: P25 Smartzone, 3600/9600 capability, Antenna, Impres Rapid Charger, Belt Clip, Impres LiIon 2700 mAh Battery,
B1-49		XTS2500 Portable 800 MHz Type III Includes: P25 Smartzone, 3600/9600 capability, Impres LiIon 2700 mAh Battery Antenna, Impres Rapid Charger Charger, Belt Clip,



Office of the City Attorney  
Risk Management

March 10, 2015

To Whom It May Concern:

Re: Property & General Liability Insurance for West Valley City

In response to your request of West Valley City for proof of insurance, please accept this letter as evidence of insurance coverage maintained by West Valley City corporation. The coverage listed below pertains to all City departments and activities, at any and all locations including the Municipal Building Authority, Housing Authority, and the West Valley City Redevelopment Agency.

<u>Policy</u>	<u>Carrier</u>	<u>Effective Date</u>	<u>Coverage Limits</u>
<b>Maverik Center Family Fitness Center</b> Policy SF604	Affiliated FM	July 1, 2014	\$140,400,000
<b>Blanket Property</b> Policy	Lexington Insurance Company	July 1, 2014	\$106,133,351
<b>Off-Duty Auto</b> Policy	Great American Insurance Company	July 1, 2014	\$1,000,000
<b>Liability Insurance</b> Policy #530-001	URMMA (Utah Risk Management Mutual Association)	7/1/1985	\$6,000,000

West Valley City's workers compensation coverage is provided by the Utah Workers Compensation Fund, Policy Number 1639186.

Please contact me at (801) 963-3240 if you need additional information relating to West Valley City's insurance coverage. Thank you.

Sincerely,

Rachel White  
Risk Analyst

Attachment



**ACORD**<sup>TM</sup>**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

3/11/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Moreton &amp; Company - Utah</b> <b>709 East South Temple</b> <b>Salt Lake City, UT 84102</b> <b>801 531-1234</b>	<b>CONTACT NAME:</b> Julie Sorensen / Kery Oldroyd <b>PHONE (A/C, No, Ext):</b> 801 531-1234 <b>FAX (A/C, No):</b> 801-531-6117 <b>E-MAIL ADDRESS:</b> julie@moreton.com														
<b>INSURED</b> <b>West Valley City - URMMA Group</b> <b>3600 Constitution Blvd</b> <b>West Valley City, UT 84119-3027</b>	<table border="1"> <tr> <th data-bbox="816 426 1437 451">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1437 426 1567 451">NAIC #</th> </tr> <tr> <td data-bbox="816 451 1437 478"><b>INSURER A : Lexington Insurance Company</b></td> <td data-bbox="1437 451 1567 478"><b>19437</b></td> </tr> <tr> <td data-bbox="816 485 1437 512"><b>INSURER B :</b></td> <td data-bbox="1437 485 1567 512"></td> </tr> <tr> <td data-bbox="816 518 1437 546"><b>INSURER C :</b></td> <td data-bbox="1437 518 1567 546"></td> </tr> <tr> <td data-bbox="816 552 1437 579"><b>INSURER D :</b></td> <td data-bbox="1437 552 1567 579"></td> </tr> <tr> <td data-bbox="816 585 1437 613"><b>INSURER E :</b></td> <td data-bbox="1437 585 1567 613"></td> </tr> <tr> <td data-bbox="816 619 1437 630"><b>INSURER F :</b></td> <td data-bbox="1437 619 1567 630"></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A : Lexington Insurance Company</b>	<b>19437</b>	<b>INSURER B :</b>		<b>INSURER C :</b>		<b>INSURER D :</b>		<b>INSURER E :</b>		<b>INSURER F :</b>	
INSURER(S) AFFORDING COVERAGE	NAIC #														
<b>INSURER A : Lexington Insurance Company</b>	<b>19437</b>														
<b>INSURER B :</b>															
<b>INSURER C :</b>															
<b>INSURER D :</b>															
<b>INSURER E :</b>															
<b>INSURER F :</b>															

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Blanket Property</b> <b>Incl Mobile Equip</b> <b>R.C. &amp; ACV</b>			020413121	07/01/2014	07/01/2015	<b>Limit \$106,133,351</b> <b>Ded \$10,000</b> <b>Direct Physical Loss</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate holder is included as loss payee as respects to the 50 police radio's and equipment valued at \$170,000. Blanket Property coverage applies, subject to deductible.

**CERTIFICATE HOLDER****CANCELLATION**

<b>U.S. Bancorp Government Leasing</b> <b>Leasing &amp; Finance, Inc.</b> <b>13010 SW 68th Parkway, Suite 100</b> <b>Portland, OR 97233</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> 
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## **CONDITIONS**

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

### **Applicable in California**

When this form is used to provide insurance in the amount of one million dollars (\$1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

### **Applicable in Delaware**

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

### **Applicable in Florida**

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

### **Applicable in Nevada**

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

**SPECIAL CONDITIONS/OTHER COVERAGES (Cont. from page 1)**

**Additional Named Insured:**

Brigham City Corporation  
Cedar City Corporation  
Centerville City Corp & Municipal Bldg Auth  
City of Draper  
City of Farmington  
Enterprise City  
Escalante City  
Kanab City  
Layton City Corporation  
Lindon City  
Mapleton City  
Midway City  
Ogden City  
Orem City  
Riverdale City  
Roy City  
South Jordan City  
Spanish Fork City  
West Valley City & Housing Authority of West Valley

**ACORD™ INSURANCE BINDER**DATE  
07/01/14

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER:	PHONE (A/C, No, Ext): 801-531-1234 FAX (A/C, No): 801-531-6117	COMPANY Great American Insurance Co.	BINDER # BINDER159146
Moreton & Company - Utah 709 East South Temple Salt Lake City, UT 84102 Broker: Kery Oldroyd		DATE EFFECTIVE 07/01/14	TIME 12:01
CODE:		EXPIRATION DATE 09/01/14	
SUB CODE:		TIME X 12:01 AM PM NOON	
AGENCY CUSTOMER ID: 3353 INSURED Utah Risk Management Mutual Mutual Association, ETAL 502 East 770 North Orem, UT 84097		THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #:	
		DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location) Per Individual City Schedules  Binder issued pending issuance of the renewal policy	

## COVERAGES

## LIMITS

TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC				
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR		EACH OCCURRENCE		\$
		DAMAGE TO RENTED PREMISES		\$
		MED EXP (Any one person)		\$
		PERSONAL & ADV INJURY		\$
		GENERAL AGGREGATE		\$
		PRODUCTS - COMP/OP AGG		\$
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Scheduled Positions on file with Company - Off Duty Auto Liability  See Spec. Conditions/Other Coverages	COMBINED SINGLE LIMIT		\$ 1,000,000
		BODILY INJURY (Per person)		\$
		BODILY INJURY (Per accident)		\$
		PROPERTY DAMAGE		\$
		MEDICAL PAYMENTS		\$
		PERSONAL INJURY PROT		\$ 3,000
		UNINSURED MOTORIST		\$ 1,000,000
		UNDUM		\$ 1,000,000
AUTO PHYSICAL DAMAGE DEDUCTIBLE <input checked="" type="checkbox"/> COLLISION: Various <input checked="" type="checkbox"/> OTHER THAN COL: Various	ALL VEHICLES <input checked="" type="checkbox"/> SCHEDULED VEHICLES Deductibles & Vehicle Schedules Attached Per Individual City	<input checked="" type="checkbox"/> ACTUAL CASH VALUE <input checked="" type="checkbox"/> STATED AMOUNT OTHER		\$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT		\$
		OTHER THAN AUTO ONLY:		
		EACH ACCIDENT		\$
		AGGREGATE		\$
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE		\$
		AGGREGATE		\$
		SELF-INSURED RETENTION		\$
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		WC STATUTORY LIMITS		
		E.L. EACH ACCIDENT		\$
		E.L. DISEASE - EA EMPLOYEE		\$
		E.L. DISEASE - POLICY LIMIT		\$
SPECIAL CONDITIONS/ OTHER COVERAGES Additional Named Insureds: (See attached Spec Conditions/Other Covs page.)		FEES		\$
		TAXES		\$
		ESTIMATED TOTAL PREMIUM		\$

## NAME &amp; ADDRESS

All renewal certificates  
requested will be issued and  
mailed separately.MORTGAGEE  
LOSS PAYEE

ADDITIONAL INSURED

LOAN #

AUTHORIZED REPRESENTATIVE

Kery Oldroyd

## **CONDITIONS**

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

### **Applicable in California**

When this form is used to provide insurance in the amount of one million dollars (\$1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

### **Applicable in Delaware**

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

### **Applicable in Florida**

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

### **Applicable in Nevada**

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

## SPECIAL CONDITIONS/OTHER COVERAGES (Cont. from page 1)

Brigham City  
Cedar City  
Centerville City  
Draper City  
Enterprise  
Escalante  
Farmington City  
Kanab City  
Layton City  
Lindon City  
Mapleton  
Midway  
Ogden  
Orem City  
Riverdale City  
Roy City  
South Jordan City  
Spanish Fork City  
Springville City  
West Valley City

Coverage: \$50,000 & Above. (R.C.) (Various deductibles- Per City  
Schedules) \$2500, \$5,000 & \$25,000

Coverage: Off Duty Auto Liability Position Schedule on file with Company  
Limit 1: 1,000,000



August 14, 2014

This will certify that West Valley City is a member in good standing of the Utah Risk Management Mutual Association and, as such, is protected by the provisions of the Association's Joint Protection Program.

Name of insurance company: Utah Risk Management Mutual Association  
502 East 770 North  
Orem, UT 84097  
(801) 225-6692

Policy Effective Dates: July 1, 2014 through June 30, 2015

Coverage Limits: \$6 million per occurrence, no aggregate

Additional insureds: URMMA's Interlocal Agreement does not allow any other entity to be named as an additional insured.

Further inquiries should be directed to this office.

Kathy Kenison  
Administrative Services Manager

cc: Rachel White



## DECLARATION OF COVERAGE FOR FISCAL YEAR 2014-15

**Member Entity:** West Valley City Corporation  
**Address:** 3600 Constitution Blvd.  
West Valley City, Utah 84119

**Member Representative:** Wayne Pyle  
**Telephone:** (801) 966-3600  
**Fax:** (801) 966-8455

### 2014-15 Fiscal Year Coverage:

- A. Type: THIRD PARTY LIABILITY - CLAIMS MADE**  
Limits: See 2014-15 Joint Protection Program  
Deductible: \$10,000  
Policy #: 530-001  
Availability: October 1, 1985  
Comments: 2013-14 Joint Protection Program contains all details
- B. Type: PROPERTY - MASTER POLICY**  
Limits: Per individual Member policy  
Deductible: Per individual Member policy  
Policy #: 020413121 through Fred A. Moreton & Co.  
Availability: July 1, 1990  
Comments: Member may selected a variety of coverage provided under the Master Policy through Fred A. Moreton & Co.
- C. Type: AUTO PHYSICAL DAMAGE FOR VEHICLES UNDER \$50,000**  
Deductible: \$1,000  
Policy #: 530-001  
Comments: Scheduled autos comp & collision
- D. Type: SPECIAL EVENTS LIABILITY - MASTER POLICY**  
Limits: \$2,000,000 URMMA/Member named as insured  
Deductible: Per each policy  
Policy #: 35848224 through Fred A. Moreton & Co.  
Availability: July 1, 1995  
Comments: Member must contact Fred A. Moreton & Co. regarding coverage available. Fred A. Moreton & Co. will deal directly with the organization and/or individual. No additional involvement is required by Member. A certificate of coverage will be provided to the Member by Fred A. Moreton & Co.
- E. Type: OFF-DUTY VEHICLE LIABILITY - MASTER POLICY**  
Limits: Per individual member  
Deductible: Per individual member  
Policy #: 74969965 through Fred A. Moreton & Co.  
Availability: July 1, 1988  
Comments: Member must contact Fred A. Moreton & Co. regarding coverage available and costs. A certificate of coverage will be provided to the member from Fred A. Moreton & Co.

**THE VARIOUS COVERAGES OUTLINED IN A, B, C, AND D ARE THE  
COMPLETE COVERAGES OFFERED BY URMMA TO ITS MEMBERS**



## Notification of Tax Treatment to Tax-Exempt Lease/Purchase Agreement

This **Notification of Tax Treatment** is pursuant to the Master Tax-Exempt Lease/Purchase Agreement dated as of March 30, 2015 and the related Property Schedule No. 1 dated March 30, 2015, between Lessor and Lessee (the "Agreement").

- \_\_\_\_ Lessee agrees that this Property Schedule SHOULD be subject to sales/use taxes
- X   Lessee agrees that this Property Schedule should NOT be subject to sales/use taxes and Lessee has included our tax-exemption certificate with this document package
- \_\_\_\_ Lessee agrees that this Property Schedule should NOT be subject to sales/use taxes and no tax-exemption certificate is issued to us by the State
- \_\_\_\_ Lessee agrees that this Property Schedule is a taxable transaction and subject to any/all taxes
- \_\_\_\_ Lessee agrees that this Property Schedule is subject to sales/use taxes and will pay those taxes directly to the State or Vendor

IN WITNESS WHEREOF, Lessee has caused this Notification of Tax Treatment to be executed by their duly authorized representative.

<b>Lessee: West Valley City, Utah</b>
By: _____
Name: Ron Bigelow
Title: Mayor

APPROVED AS TO FORM  
West Valley City Attorney's Office  
By: [Signature]  
Date: 3.11.15

# Instructions for Form 8038-G

(Rev. September 2011)

## Information Return for Tax-Exempt Governmental Obligations



Department of the Treasury  
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

### General Instructions

#### Purpose of Form

Form 8038-G is used by issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

#### Who Must File

IF the issue price (line 21, column (b)) is...	THEN, for tax-exempt governmental obligations issued after December 31, 1986, issuers must file...
\$100,000 or more	A separate Form 8038-G for each issue
Less than \$100,000	Form 8038-GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales



**CAUTION** For all build America bonds and recovery zone economic development bonds use Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds. For tax credit bonds and specified tax credit bonds use Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.

#### When To File

File Form 8038-G on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond is issued. Form 8038-G may not be filed before the issue date and must be completed based on the facts as of the issue date.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-G under Section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file timely is not due to willful neglect. Type or print at the top of the form "Request for Relief under section 3 of Rev. Proc. 2002-48" and attach a letter explaining why Form 8038-G was not submitted to the IRS on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust

indenture or other bond documents. See *Where To File* next.

#### Where To File

File Form 8038-G, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

#### Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For build America bonds (Direct Pay), build America bonds (Tax Credit), and recovery zone economic development bonds, complete Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

For qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, qualified school construction bonds, clean renewable energy bonds, Midwestern tax credit bonds, and all other qualified tax credit bonds (except build America bonds), file Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.

#### Rounding to Whole Dollars

You may show amounts on this return as whole dollars. To do so, drop amounts less than 50 cents and increase amounts from 50 cents through 99 cents to the next higher dollar.

#### Questions on Filing Form 8038-G

For specific questions on how to file Form 8038-G send an email to the IRS at [TaxExemptBondQuestions@irs.gov](mailto:TaxExemptBondQuestions@irs.gov) and put "Form 8038-G Question" in the subject line. In the email include a description of your question, a return email address, the name of a contact person, and a telephone number.

#### Definitions

**Tax-exempt obligation.** This is any obligation, including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, **and**
- More than 10% of the payment of principal or interest of the issue is **either** (a) secured by an interest in property to be used for a private business use (or payments for such property) **or** (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used directly or indirectly to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

**Issue price.** The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the first price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

**Issue.** Generally, obligations are treated as part of the same issue if they are issued by the same issuer, on the same date, and in a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meet the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds are to be used for construction expenditures with respect to property to be owned by a governmental unit or a section 501(c)(3) organization, and
2. All the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a section 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

### Part I—Reporting Authority

**Amended return.** An issuer may file an amended return to change or add to the information reported on a previously filed

return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the **Amended Return** box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return and write across the top, "Amended Return Explanation." Failure to attach an explanation may result in a delay in processing the form.

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. For a lease or installment sale, the issuer is the lessee or the purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

**Line 3a.** If the issuer wishes to authorize a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) to communicate with the IRS and whom the IRS may contact about this return (including in writing or by telephone), enter the name of such person here. The person listed in line 3a must be an individual. Do not enter the name and title of an officer or other employee of the issuer here (use line 10a for that purpose).

**Note.** By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual entered on line 3a and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

**Lines 4 and 6.** If you listed an individual on line 3a to communicate with the IRS and whom the IRS may contact about this return, enter the number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code of that person. Otherwise, enter the issuer's number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code.

**Note.** The address entered on lines 4 and 6 is the address the IRS will use for all written communications regarding the processing of this return, including any notices.

**Line 5.** This line is for IRS use only. Do not make any entries in this box.

**Line 7.** The date of issue is generally the date on which the issuer physically

exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds. For a lease or installment sale, enter the date interest starts to accrue in a MM/DD/YYYY format.

**Line 8.** If there is no name of the issue, please provide other identification of the issue.

**Line 9.** Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. If the issue does not have a CUSIP number, write "None."

**Line 10a.** Enter the name and title of the officer or other employee of the issuer whom the IRS may call for more information. If the issuer wishes to designate a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) whom the IRS may call for more information about the return, enter the name, title, and telephone number of such person on lines 3a and 3b.



Complete lines 10a and 10b even if you complete lines 3a and 3b.

### Part II—Type of Issue



Elections referred to in Part II are made on the original bond documents, not on this form.

Identify the type of obligations issued by entering the corresponding issue price (see *Issue price* under *Definitions* earlier). Attach a schedule listing names and EINs of organizations that are to use proceeds of these obligations, if different from those of the issuer, include a brief summary of the use and indicate whether or not such user is a governmental or nongovernmental entity.

**Line 18.** Enter a description of the issue in the space provided.

**Line 19.** If the obligations are short-term tax anticipation notes or warrants (TANs) or short-term revenue anticipation notes or warrants (RANs), check box 19a. If the obligations are short-term bond anticipation notes (BANs), issued with the expectation that they will be refunded with the proceeds of long-term bonds at some future date, check box 19b. Do not check both boxes.

**Line 20.** Check this box if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

### Part III—Description of Obligations

**Line 21.** For column (a), the final maturity date is the last date the issuer must redeem the entire issue.

For column (b), see *Issue price* under *Definitions* earlier.

For column (c), the stated redemption price at maturity of the entire issue is the sum of the stated redemption prices at maturity of each bond issued as part of the issue. For a lease or installment sale, write "N/A" in column (c).

For column (d), the weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions), divided by the issue price of the entire issue (from line 21, column (b)). For a lease or installment sale, enter instead the total number of years the lease or installment sale will be outstanding.

For column (e), the yield, as defined in section 148(h), is the discount rate that, when used to compute the present value of all payments of principal and interest to be paid on the obligation, produces an amount equal to the purchase price, including accrued interest. See Regulations section 1.148-4 for specific rules to compute the yield on an issue. If the issue is a variable rate issue, write "VR" as the yield of the issue. For other than variable rate issues, carry the yield out to four decimal places (for example, 5.3125%). If the issue is a lease or installment sale, enter the effective rate of interest being paid.

### Part IV—Uses of Proceeds of Bond Issue

For a lease or installment sale, write "N/A" in the space to the right of the title for Part IV.

**Line 22.** Enter the amount of proceeds that will be used to pay interest from the date the bonds are dated to the date of issue.

**Line 24.** Enter the amount of the proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel. If no bond proceeds will be used to pay bond issuance costs, enter zero. Do not leave this line blank.

**Line 25.** Enter the amount of the proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148(h) (for example, bond insurance premiums and certain fees for letters of credit).

**Line 26.** Enter the amount of proceeds that will be allocated to such a fund.

**Line 27.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds within 90 days of the date of issue.

**Line 28.** Enter the amount of the proceeds that will be used to pay

principal, interest, or call premium on any other issue of bonds after 90 days of the date of issue, including proceeds that will be used to fund an escrow account for this purpose.

### Part V—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt bonds. For a lease or installment sale, write "N/A" in the space to the right of the title for Part V.

**Lines 31 and 32.** The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as on line 21, column (d).

**Line 34.** If more than a single issue of bonds will be refunded, enter the date of issue of each issue. Enter the date in an MM/DD/YYYY format.

### Part VI—Miscellaneous

**Line 35.** An allocation of volume cap is required if the nonqualified amount for the issue is more than \$15 million but is not more than the amount that would cause the issue to be private activity bonds.

**Line 36.** If any portion of the gross proceeds of the issue is or will be invested in a guaranteed investment contract (GIC), as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the GIC and the name of the provider of such contract.

**Line 37.** Enter the amount of the proceeds of this issue used to make a loan to another governmental unit, the interest of which is tax-exempt.

**Line 38.** If the issue is a loan of proceeds from another tax-exempt issue, check the box and enter the date of issue, EIN, and name of issuer of the master pool obligation.

**Line 40.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with this form. See Rev. Proc. 92-22, 1992-1 C.B. 736 for rules regarding the "election document."

**Line 41a.** Check this box if the issuer has identified a hedge on its books and records according to Regulations sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5) that permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

**Line 42.** In determining if the issuer has super-integrated a hedge, apply the rules of Regulations section 1.148-4(h)(4). If the hedge is super-integrated, check the box.

**Line 43.** If the issuer takes a "deliberate action" after the issue date that causes

the conditions of the private business tests or the private loan financing test to be met, then such issue is also an issue of private activity bonds. Regulations section 1.141-2(d)(3) defines a deliberate action as any action taken by the issuer that is within its control regardless of whether there is intent to violate such tests. Regulations section 1.141-12 explains the conditions to taking remedial action that prevent an action that causes an issue to meet the private business tests or private loan financing test from being treated as a deliberate action. Check the box if the issuer has established written procedures to ensure timely remedial action for all nonqualified bonds according to Regulations section 1.141-12 or other remedial actions authorized by the Commissioner under Regulations section 1.141-12(h).

**Line 44.** Check the box if the issuer has established written procedures to monitor compliance with the arbitrage, yield restriction, and rebate requirements of section 148.

**Line 45a.** Check the box if some part of the proceeds was used to reimburse expenditures. Figure and then enter the amount of proceeds that are used to reimburse the issuer for amounts paid for a qualified purpose prior to the issuance of the bonds. See Regulations section 1.150-2.

**Line 45b.** An issuer must adopt an official intent to reimburse itself for preissuance expenditures within 60 days after payment of the original expenditure unless excepted by Regulations section 1.150-2(f). Enter the date the official intent was adopted. See Regulations section 1.150-2(e) for more information about official intent.

### Signature and Consent

An authorized representative of the issuer must sign Form 8038-G and any applicable certification. Also print the name and title of the person signing Form 8038-G. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that have been designated in Form 8038-G.

**Note.** If the issuer in Part 1, lines 3a and 3b authorizes the IRS to communicate (including in writing and by telephone) with a person other than an officer or other employee of the issuer, by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

### Paid Preparer

If an authorized officer of the issuer filled in this return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the

return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature (a facsimile signature is acceptable),
- Enter the preparer information, and
- Give a copy of the return to the issuer.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us

the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

Learning about the law or the form . . . . .	2 hr., 41 min.
Preparing, copying, assembling, and sending the form to the IRS . . . . .	3 hr., 3 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this office. Instead, see *Where To File*.

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name West Valley City		2 Issuer's employer identification number (EIN) 87-0362454	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) 3600 Constitution Blvd	Room/suite	5 Report number (For IRS Use Only) 3	
6 City, town, or post office, state, and ZIP code West Valley City, Utah 84119		7 Date of issue 04/02/15	
8 Name of issue Property Schedule No. 1		9 CUSIP number N/A	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) Jim Welch, Finance Director		10b Telephone number of officer or other employee shown on 10a 801.963.3235	

## Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14	170000	00
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe ►	18		
19 If obligations are TANs or RANs, check only box 19a			
If obligations are BANs, check only box 19b			
20 If obligations are in the form of a lease or installment sale, check box			

## Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	01/02/22	\$ 170,000.00	\$ N/A	7 years	2.145 %

## Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22		
23 Issue price of entire issue (enter amount from line 21, column (b))	23		
24 Proceeds used for bond issuance costs (including underwriters' discount)	24		
25 Proceeds used for credit enhancement	25		
26 Proceeds allocated to reasonably required reserve or replacement fund	26		
27 Proceeds used to currently refund prior issues	27		
28 Proceeds used to advance refund prior issues	28		
29 Total (add lines 24 through 28)	29		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30		

## Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

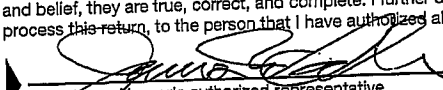
Form **8038-G** (Rev. 9-2011)

**Part VI Miscellaneous**

- 35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . . **35**
- 36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . . **36a**
- b Enter the final maturity date of the GIC ▶ \_\_\_\_\_
- c Enter the name of the GIC provider ▶ \_\_\_\_\_
- 37 Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . . **37**
- 38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box ☐ and enter the following information:
- b Enter the date of the master pool obligation ▶ \_\_\_\_\_
- c Enter the EIN of the issuer of the master pool obligation ▶ \_\_\_\_\_
- d Enter the name of the issuer of the master pool obligation ▶ \_\_\_\_\_
- 39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ☐
- 40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ☐
- 41a If the issuer has identified a hedge, check here ☐ and enter the following information:
- b Name of hedge provider ▶ \_\_\_\_\_
- c Type of hedge ▶ \_\_\_\_\_
- d Term of hedge ▶ \_\_\_\_\_
- 42 If the issuer has superintegrated the hedge, check box ☐
- 43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ☐
- 44 If the issuer has established written procedures to monitor the requirements of section 148, check box ☐
- 45a If some portion of the proceeds was used to reimburse expenditures, check here ☐ and enter the amount of reimbursement ▶ \_\_\_\_\_
- b Enter the date the official intent was adopted ▶ \_\_\_\_\_

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

  
Signature of issuer's authorized representative

3-11-15  
Date

James Welch, Finance Director  
Type or print name and title

**Paid Preparer Use Only**

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name ▶

Firm's EIN ▶

Firm's address ▶

Phone no.

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("*Escrow Agreement*") is made as of March 30, 2015 by and among U.S. Bancorp Government Leasing and Finance, Inc. ("*Lessor*"), West Valley City, Utah ("*Lessee*") and U.S. BANK NATIONAL ASSOCIATION, as escrow agent ("*Escrow Agent*").

Lessor and Lessee have heretofore entered into that certain Master Tax-Exempt Lease/Purchase Agreement dated as of March 30, 2015 (the "*Master Agreement*") and a Property Schedule No. 1 thereto dated March 30, 2015 (the "*Schedule*") and, together with the terms and conditions of the Master Agreement incorporated therein, the "*Agreement*"). The Schedule contemplates that certain personal property described therein (the "*Equipment*") is to be acquired from the vendor(s) or manufacturer(s) thereof (the "*Vendor*"). After acceptance of the Equipment by Lessee, the Equipment is to be financed by Lessor to Lessee pursuant to the terms of the Agreement.

The Master Agreement further contemplates that Lessor will deposit an amount equal to the anticipated aggregate acquisition cost of the Equipment (the "*Purchase Price*"), being \$170,000.00, with Escrow Agent to be held in escrow and applied on the express terms set forth herein. Such deposit, together with all interest and other additions received with respect thereto (hereinafter the "*Escrow Fund*") is to be applied to pay the Vendor its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee); and, if applicable, to reimburse Lessee for progress payments already made by it to the Vendor of the Equipment.

The parties desire to set forth the terms on which the Escrow Fund is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The moneys and investments held in the Escrow Fund are for the benefit of Lessee and Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessee or Lessor. Lessor, Lessee and Escrow Agent intend that the Escrow Fund constitute an escrow account in which Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein for the disbursement of funds by the Escrow Agent therefrom. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lessor have a security interest in the Escrow Fund, and such security interest is hereby granted by Lessee to secure payment of all sums due to Lessor under the Master Agreement. For such purpose, Escrow Agent hereby agrees to act as agent for Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Escrow Fund, the Lessor's interest therein.

2. On such day as is determined to the mutual satisfaction of the parties (the "*Closing Date*"), Lessor shall deposit with Escrow Agent cash in the amount of the Purchase Price, to be held in escrow by Escrow Agent on the express terms and conditions set forth herein.

On the Closing Date, Escrow Agent agrees to accept the deposit of the Purchase Price by Lessor, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto, as the Escrow Fund hereunder, in escrow on the express terms and conditions set forth herein.

3. Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments comprising the Escrow Fund from time to time shall be held or registered in the name of Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).



4. The cash comprising the Escrow Fund from time to time shall be invested and reinvested by Escrow Agent in one or more investments as directed by Lessee. Absent written direction from Lessee, the cash will be invested in the U.S. Bank National Association Money Market Deposit Fund. See Exhibit 1 Investment Direction Letter. Lessee represents and warrants to Escrow Agent and Lessor that the investments selected by Lessee for investment of the Escrow Fund are permitted investments for Lessee under all applicable laws. Escrow Agent will use due diligence to collect amounts payable under a check or other instrument for the payment of money comprising the Escrow Fund and shall promptly notify Lessee and Lessor in the event of dishonor of payment under any such check or other instruments. Interest or other amounts earned and received by Escrow Agent with respect to the Escrow Fund shall be deposited in and comprise a part of the Escrow Fund. Escrow Agent shall maintain accounting records sufficient to permit calculation of the income on investments and interest earned on deposit of amounts held in the Escrow Fund. The parties acknowledge that to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the escrow, the parties waive receipt of such confirmations, to the extent permitted by law. The Escrow Agent shall furnish a statement of security transactions on its regular monthly reports. Attached as Exhibit 6 is the Class Action Negative Consent Letter to be reviewed by Lessee.

5. Upon request by Lessee and Lessor, Escrow Agent shall send monthly statements of account to Lessee and Lessor, which statements shall set forth all withdrawals from and interest earnings on the Escrow Fund as well as the investments in which the Escrow Fund is invested.

6. Escrow Agent shall take the following actions with respect to the Escrow Fund:

(a) Upon Escrow Agent's acceptance of the deposit of the Purchase Price, an amount equal to Escrow Agent's set-up fee, as set forth on Exhibit 2 hereto, shall be disbursed from the Escrow Fund to Escrow Agent in payment of such fee.

(b) Escrow Agent shall pay costs of the Equipment upon receipt of a duly executed Requisition Request (substantially in the format of Exhibit 3) signed by Lessor and Lessee. Lessor's authorized signatures are provided in Exhibit 5. Lessee's authorized signatures will be provided in Exhibit 3 of Master Lease Purchase Agreement. Escrow Agent will use best efforts to process requests for payment within one (1) business day of receipt of requisitions received prior to 2:00 p.m. Central Time. The final Requisition shall be accompanied by a duly executed Acceptance Certificate form attached as Exhibit 4 hereto.

(c) Upon receipt by Escrow Agent of written notice from Lessor that an Event of Default or an Event of Nonappropriation (if provided for under the Master Agreement) has occurred under the Agreement, all funds then on deposit in the Escrow Fund shall be paid to Lessor for application in accordance with the Master Agreement, and this Escrow Agreement shall terminate.

(d) Upon receipt by Escrow Agent of written notice from Lessor that the purchase price of the Equipment has been paid in full, Escrow Agent shall pay the funds then on deposit in the Escrow Fund to Lessor to be applied first to the next Lease Payment due under the Master Agreement, and second, to prepayment of the principal component of Lease Payments in inverse order of maturity without premium. To the extent the Agreement is not subject to prepayment, Lessor consents to such prepayment to the extent of such prepayment amount from the Escrow Fund. Upon disbursement of all amounts in the Escrow Fund, this Escrow Agreement shall terminate.

(e) This Escrow Agreement shall terminate eighteen (18) months from the date of this Escrow Agreement. It may, however, be extended by mutual consent of Lessee and Lessor in writing to Escrow Agent. All funds on deposit in the Escrow Fund at the time of termination under this paragraph, unless otherwise directed by Lessee in writing (electronic means acceptable), shall be transferred to Lessor.

7. The fees and expenses, including any legal fees, of Escrow Agent incurred in connection herewith shall be the responsibility of Lessee. The basic fees and expenses of Escrow Agent shall be as set forth on Exhibit 2 and Escrow Agent is hereby authorized to deduct such fees and expenses from the Escrow Fund as and when the same are incurred without any further authorization from Lessee or Lessor. Escrow Agent may employ

legal counsel and other experts as it deems necessary for advice in connection with its obligations hereunder. Escrow Agent waives any claim against Lessor with respect to compensation hereunder.

8. Escrow Agent shall have no liability for acting upon any written instruction presented by Lessor in connection with this Escrow Agreement, which Escrow Agent in good faith believes to be genuine. Furthermore, Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own negligence, willful misconduct or bad faith. Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made by Escrow Agent.

9. Escrow Agent may resign at any time by giving thirty (30) days' prior written notice to Lessor and Lessee. Lessor may at any time remove Escrow Agent as Escrow Agent under this Escrow Agreement upon written notice. Such removal or resignation shall be effective on the date set forth in the applicable notice. Upon the effective date of resignation or removal, Escrow Agent will transfer the Escrow Fund to the successor Escrow Agent selected by Lessor.

10. Lessee hereby represents, covenants and warrants that pursuant to Treasury Regulations Section 1.148-7(d), the gross proceeds of the Agreement will be expended for the governmental purposes for which the Agreement was entered into, as follows: at least 15% within six months after the Commencement Date, such date being the date of deposit of funds into the Escrow Fund, at least 60% within 12 months after the Commencement Date, and 100% within 18 months after the Commencement Date. If Lessee is unable to comply with Section 1.148-7(d) of the Treasury Regulations, Lessee shall, at its sole expense and cost, compute rebatable arbitrage on the Agreement and pay rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final rental or Lease Payment due under the Agreement.

11. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing Escrow Agent may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing Escrow Agent shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue so to refrain and refuse so to act until:

(a) the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; or

(b) all differences shall have been adjusted by Master Agreement and Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.

12. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, and shall be sufficiently given and served upon the other party if delivered (a) personally, (b) by United States registered or certified mail, return receipt requested, postage prepaid, (c) by an overnight delivery by a service such as Federal Express or Express Mail from which written confirmation of overnight delivery is available, or (d) by facsimile with a confirmation copy by regular United States mail, postage prepaid, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

13. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor.

14. This Escrow Agreement shall be governed by and construed in accordance with the laws in the state of the Escrow Agent's location. This Escrow Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties.

15. This Escrow Agreement and any written direction may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

U.S. Bancorp Government Leasing and Finance, Inc., as Lessor
By:
Name:
Title:
Address: 13010 SW 68 <sup>th</sup> Parkway, Suite 100 Portland, OR 97223

West Valley City, Utah, as Lessee
By:
Name: Ron Bigelow
Title: Mayor
Address: 3600 Constitution Blvd West Valley City, Utah 84119

U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent
By:
Name:
Title:
Address: U.S. Bank National Association 950 17 <sup>th</sup> Street, 12 <sup>th</sup> Floor Denver, CO 80202

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**

By: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT 1

U.S. BANK NATIONAL ASSOCIATION  
MONEY MARKET ACCOUNT AUTHORIZATION FORM  
DESCRIPTION AND TERMS

The U.S. Bank Money Market account is a U.S. Bank National Association ("U.S. Bank") interest-bearing money market deposit account designed to meet the needs of U.S. Bank's Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank's discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

West Valley City, Utah

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Authorized Directing Party

\_\_\_\_\_  
Trust Account Number – includes existing and  
future sub-accounts unless otherwise directed

\_\_\_\_\_  
Title/Date

APPROVED AS TO FORM  
West Valley City Attorney's Office

By: \_\_\_\_\_

Date: \_\_\_\_\_

*[Signature]*  
3.11.15

## EXHIBIT 2

### Schedule of Fees for Services as Escrow Agent For West Valley City, Utah Equipment Lease Purchase Escrow

CTS01010A	<b>Acceptance Fee</b> The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time, non-refundable fee, payable at closing.	WAIVED
CTS04460	<b>Escrow Agent</b> Annual fee for the standard escrow agent services associated with the administration of the account. Administration fees are payable in advance.	WAIVED
	<b>Direct Out of Pocket Expenses</b> Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel after the initial close, travel expenses and filing fees.	At Cost
	<b>Extraordinary Services</b> Extraordinary Services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the services and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.	

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

#### IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

**EXHIBIT 3****REQUISITION REQUEST**

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under that certain Escrow Agreement dated as of March 30, 2015 (the "Escrow Agreement") by and among U.S. Bancorp Government Leasing and Finance, Inc. (the "Lessor"), West Valley City, Utah (the "Lessee"), and U.S. Bank National Association (the "Escrow Agent"), the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee) with respect to equipment being financed under that certain Master Tax-Exempt Lease Purchase Agreement dated as of March 30, 2015 (the "Master Agreement") and Property Schedule No. 1 thereto dated March 30, 2015 (the "Schedule" and, together with the terms and conditions of the Master Agreement incorporated therein, the "Agreement"), by and between the Lessor and the Lessee, and has not formed the basis of any prior requisition request.

PAYEE	AMOUNT	INVOICE NO.	EQUIPMENT

Total requisition amount \$ \_\_\_\_\_

The undersigned, as Lessee under the Master Agreement, hereby certifies:

1. The items of the Equipment being acquired with the proceeds of this disbursement have been delivered and installed at the location(s) contemplated by the Master Agreement. The Lessee has conducted such inspection and/or testing of the Equipment being acquired with the proceeds of this disbursement as it deems necessary and appropriate, and such Equipment has been accepted by Lessee.
2. The costs of the Equipment to be paid from the proceeds of this disbursement have been properly incurred, are a proper charge against the Escrow Fund and have not been the basis of any previous disbursement.
3. No part of the disbursement requested hereby will be used to pay for materials not yet incorporated into the Equipment or for services not yet performed in connection therewith.
4. The Equipment is covered by insurance in the types and amounts required by the Agreement.
5. No Event of Default or Event of Nonappropriation (if applicable), as each such term is defined in the Master Agreement, and no event which with the giving of notice or lapse of time, or both, would become such an Event of Default or Event of Nonappropriation has occurred and is continuing on the date hereof.
6. If Lessee paid an invoice prior to the commencement date of the Master Agreement, and is requesting reimbursement for such payment, Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. §1.150-2.

Request Date: \_\_\_\_\_

<b>Lessor: U.S. Bancorp Government Leasing and Finance, Inc.</b>
By: _____
Name: _____
Title: _____

<b>Lessee: West Valley City, Utah</b>
By: _____
Name: Ron Bigelow
Title: Mayor

**APPROVED AS TO FORM**  
**West Valley City Attorney's Office**

By: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit 4

### Acceptance Certificate

U.S. Bancorp Government Leasing and Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, OR 97223

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc. and West Valley City, Utah

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), the undersigned ("Lessee") hereby certifies and represents to, and agrees with, U.S. Bancorp Government Leasing and Finance, Inc. ("Lessor"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default or a Nonappropriation Event (as such terms are defined in the Master Agreement) exists at the date hereof.

Acceptance Date: \_\_\_\_\_

<b>Lessee: West Valley City, Utah</b>	
By:	
Name:	Ron Bigelow
Title:	Mayor

APPROVED AS TO FORM  
West Valley City Attorney's Office  
By: \_\_\_\_\_  
Date: 3.11.15

Exhibit 6

Class Action Negative Consent Letter

March 30, 2015

West Valley City, Utah  
3600 Constitution Blvd  
West Valley City, Utah 84119

RE: USBGLF/West Valley City, Utah- - Class Action Litigation Claims

Dear James:

U.S. Bank National Association ("U.S. Bank") has established its policies and procedures relative to class action litigation claims filed on behalf of its clients' accounts. This policy may impact future claims filed by U.S. Bank on behalf of the above-referenced account. Listed below are the policies regarding class action litigation claims:

1. U.S. Bank will file class action litigation claims, at no charge, on behalf of open, eligible agency or custody accounts upon receipt of proper documented authorization. This notice, with your ability to opt out as further described below, constitutes such documented authorization.
2. U.S. Bank will not file claims for agency or custody accounts that were open during the class action period but were closed prior to receipt of any notice of the class action litigation.
3. Assuming requisite information is provided by the payor to identify the applicable account, settlement proceeds of the class action litigation will be posted within a reasonable time following receipt of such proceeds to the entitled accounts that are open at such time. If entitled accounts are closed prior to distribution and receipt of settlement proceeds, they will be remitted to entitled beneficiaries or successors of the account net of any research and filing fees. Proceeds, less any research and filing fees, will be escheated if the entitled beneficiaries or successors of the account cannot be identified /located.

If you wish U.S. Bank to continue to file class action litigation proofs of claim on behalf of your account, you do not need to take any further action. However, if you do not wish U.S. Bank to file class action proofs of claim on behalf of your account, you may notify us of this election by returning this letter with your signature and date provided below within 30 days or by filing a separate authorization letter with your Account Manager by the same date.

The authorization and understanding contained in this communication constitutes an amendment of any applicable provisions of the account document for the above-referenced account.

If you have any questions, please contact me at the below number.

Sincerely,

Kathleen Connelly  
Vice President  
303-585-4591

☐ No, U.S. Bank is not authorized to file class action litigation proofs of claim on behalf of the above-referenced account(s). By making this election, I acknowledge that U.S. Bank is not responsible for forwarding notices received on class action or litigation claims.

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Date

APPROVED AS TO FORM  
West Valley City Attorney's Office  
By: [Signature]  
Date: 3.11.15



# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)

West Valley City

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:

☐ Individual/sole proprietor ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

☐ Other (see instructions) ▶

☒ Exempt payee

Address (number, street, and apt. or suite no.)

3600 Constitution Blvd

City, state, and ZIP code

West Valley City UT 84119

List account number(s) here (optional)

Requester's name and address (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

- -

Employer identification number

8 7 - 0 3 6 2 4 5 4

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign  
Here

Signature of  
U.S. person

Date

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

## Form W-9 (Rev. 12-2014)

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; do not leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note.** ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

**Line 2**

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

**Line 3**

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

**Part II Certification**

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.
2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.
4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).
5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i) (A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i) (B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



Government Leasing and Finance, Inc.

**FIRST PAYMENT INVOICE**

**PLEASE RETURN THIS PORTION WITH YOUR PAYMENT**

SCHEDULE NUMBER: 077-0019717-001

DUE DATE: March 30, 2015

CREATE DATE: March 03, 2015

AMOUNT DUE: \$6,520.00

West Valley City, Utah  
3600 Constitution Blvd  
West Valley City, Utah 84119  
Attention: Accounts Payable Dept.  
Customer Phone Number: 801-963-3235

U.S. Bancorp Government Leasing and  
Finance, Inc.  
ATTN: Lisa Albrecht  
950 17<sup>th</sup> Street, 7<sup>th</sup> Floor  
Denver, CO 80202

>>>>>>> PLEASE RETAIN THIS PORTION FOR YOUR RECORDS <<<<<<<<

Please send first payment to the address above.  
**All subsequent payments MUST be sent to this address:**

**U.S. Bancorp Government Leasing and Finance, Inc.  
PO BOX 959067  
ST. LOUIS, MO 63195-9067**

U.S. Bancorp Government Leasing and  
Finance, Inc.  
ATTN: Lisa Albrecht  
950 17<sup>th</sup> Street, 7<sup>th</sup> Floor  
Denver, CO 80202

ACCOUNT: 077-0019717-001  
AMOUNT DUE: \$6,520.00  
DUE DATE: March 30, 2015  
CREATE DATE: March 03, 2015

QUESTIONS? PLEASE CALL (303-585-  
4077)

**INVOICE SUMMARY**

Current Charges [Payment #1]	\$6,520.00
Total Due	\$6,520.00

**TOTAL AMOUNT DUE THIS INVOICE MUST  
BE PAID FOR FUNDING TO OCCUR**

**Item:** \_\_\_\_\_

**Fiscal Impact:** \$182,560.00

**Funding Source:** Lease Proceeds

**Account #:** \_\_\_\_\_

**Budget Opening Required:** ☒

**ISSUE:**

Purchase of Police and Fire Radio Communication Equipment from Motorola Solutions, Inc.

**SYNOPSIS:**

Purchase of replacement of Police and Fire radio equipment financed through a Master Tax-Exempt Lease/Purchase Agreement with US BANCORP Government Leasing and Finance, Inc.

**BACKGROUND:**

The City has a need to replace a significant amount of Police and Fire radio communications equipment. Hand held portable radios and mobile radios will be purchased from Motorola Solutions, Inc. Vendor and equipment are on the Utah State Purchasing Contract #AR-1884. Favorable terms have been negotiated with US BANCORP Government Leasing and Finance, Inc. to initiate a lease purchase transaction. Terms of the lease will expire in advance of the 15 year useful life of the assets acquired. The City has obtained a rate of 2.150% for 7 years.

Payments for this equipment will be 28 quarterly payments in advance at \$6,520.00 starting April 15, 2015, totaling \$182,560. Principal will be \$170,000.00 and interest costs will be \$12,560.00.

**RECOMMENDATION:**

Approval of resolution

**SUBMITTED BY:**

Jim Welch, Finance Director

**WEST VALLEY CITY, UTAH**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY TO  
PURCHASE RADIO COMMUNICATIONS EQUIPMENT  
FROM MOTOROLA SOLUTIONS, INC. FOR USE BY THE  
POLICE AND FIRE DEPARTMENTS.**

**WHEREAS**, the City desires to replace a significant amount of radio communications equipment (the "Equipment") for use by the Police and Fire Departments; and

**WHEREAS**, Motorola Solutions, Inc. (herein "Motorola") has been awarded the State Contract to supply said Equipment; and

**WHEREAS**, the prices awarded to Motorola are within price parameters and meet the City's needs; and

**WHEREAS**, the City Council of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to authorize the purchase of the Equipment; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of West Valley City, Utah, that:

1. The City is hereby authorized to purchase the Equipment in an amount not to exceed \$182,560.00 from Motorola.
2. The Mayor and the City Manager are hereby authorized to execute, for and on behalf of West Valley City, any documents necessary to complete said purchases.

**PASSED, APPROVED, and MADE EFFECTIVE** this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

WEST VALLEY CITY

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

Item #:	
Fiscal Impact:	None
Funding Source:	N/A
Account #:	N/A
Budget Opening Required:	No

**ISSUE:**

Approval and acceptance of a Storm Drainage Easement, and a Grant of Temporary Construction Easement from Redwood L&B, LLC, a Utah limited liability company.

**SYNOPSIS:**

Redwood L&B, LLC, a Utah limited liability company has signed a Storm Drainage Easement, and a Grant of Temporary Construction Easement across its property located at 2570 West 2365 South. (15-21-255-0004).

**BACKGROUND:**

The Redwood L&B, LLC property is one of the properties which will be affected and benefitted by construction of the Pole Line Drive Storm Drain Project. The property is the new location for CCI Mechanical which will replace Cache Valley Electric on this site. The Storm Drainage Easement will run parallel with the northeasterly boundary of the site and will allow the City to maintain an existing drainage ditch on the property. The Grant of Temporary Construction Easement along westerly 20 feet of Grantor's will allow for the construction of new storm drain piping. This project will pipe open sections of storm drain and upsize existing storm drain piping between 2365 South and SR-201. These easements were required as a condition of approval for a building permit for an additional building on this site.

**RECOMMENDATION:**

Approve and accept Storm Drain Easement and Grant of Temporary Construction Easement. Authorize the City Recorder to record the Storm Drain Easement, and the Grant of Temporary Construction Easement for and in behalf of West Valley City.

**SUBMITTED BY:**

Steven J. Dale, P.L.S., Right-of-way and Survey Section Manager



**WEST VALLEY CITY, UTAH**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY TO ACCEPT  
A STORM DRAINAGE EASEMENT AND A GRANT OF  
TEMPORARY CONSTRUCTION EASEMENT FROM  
REDWOOD L&B, LLC, FOR PROPERTY LOCATED AT  
2570 WEST 2365 SOUTH (PARCEL 15-21-255-004).**

**WHEREAS,** Redwood L&B, LLC, a Utah limited liability company, (herein “Redwood”), owns property located at approximately 2570 West 2365 South, in West Valley City (herein the “Property”); and

**WHEREAS,** the Property is affected and benefitted by construction of the Pole Line Storm Drain Project (herein the “Project”) and

**WHEREAS,** Redwood has executed a Storm Drainage Easement and a Grant of Temporary Construction Easement to facilitate construction of the Project; and

**WHEREAS,** the City Council of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to accept said Storm Drainage Easement and Grant of Temporary Construction Easement;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of West Valley City, Utah, that the Mayor is hereby authorized to accept said Storm Drainage Easement and Grant of Temporary Construction Easement and the City Recorder is authorized to record said Easements, for an on behalf of West Valley City, upon final approval of the documents by the City Manager and the City Attorney’s Office.

**PASSED, APPROVED and MADE EFFECTIVE** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**WEST VALLEY CITY**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY RECORDER**

WHEN RECORDED RETURN TO:  
West Valley City Recorder  
3600 South Constitution Blvd.  
West Valley City, Utah 84119

Space above for County Recorder's use

PARCEL I.D. #15-21-255-004

### STORM DRAINAGE EASEMENT

For valuable consideration, receipt whereof is hereby acknowledged, **Redwood L&B, LLC, a Utah limited liability company**, having an address of P.O. Box 25788, Salt Lake City, Utah 84125, GRANTOR, hereby grants to West Valley City, a municipal corporation of the State of Utah, whose principal place of business is located at 3600 South Constitution Boulevard, West Valley City, Utah 84119, its successors in interest, and assigns, GRANTEE for good and valuable consideration, receipt of which is hereby acknowledged, a perpetual easement for the installation, operation, maintenance, repair, alteration, enlargement, inspection, relocation, and replacement of storm drainage and flood control facilities, on, over, under, and across real property located in Salt Lake County, State of Utah, said easement being more particularly described as follows:

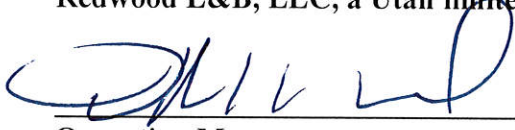
A parcel of land situate in the Northeast Quarter of Section 21, Township 1 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the Westerly Boundary Line of an entire tract of land defined in that certain Special Warranty Deed recorded December 21, 2001 as Entry No. 8099145, said point being North 00°04'22" West 334.44 feet along the Quarter Section Line and South 89°53'21" East 452.12 feet and North 00°04'22" West 340.00 feet and North 00°04'22" West 410.30 feet from the Center of Section 21, Township 1 South, Range 1 West, Salt Lake Base and Meridian, thence North 00°04'22" West 17.73 feet coincident with said Westerly Boundary Line; thence South 57°52'00" East 837.61 feet to a point on an Easterly Boundary Line of said entire tract; thence South 00°44'47" East 17.86 feet coincident with said Easterly Boundary Line; thence North 57°52'00" West 837.86 feet to a point on said Westerly Boundary Line of said entire tract and the point of beginning. Contains 12,565 square feet or 0.288 acres.

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation, and enjoyment of the easement hereby granted, and all rights and privileges incident thereto.

WITNESSED the hand of said GRANTOR this 5<sup>TH</sup> day of MARCH,  
2015.

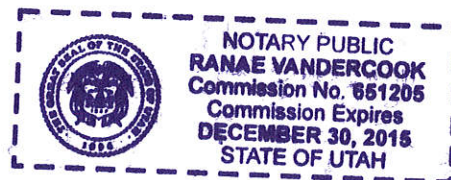
GRANTOR  
**Redwood L&B, LLC, a Utah limited liability company**

  
\_\_\_\_\_  
**Operating Manager**

State of Utah )  
County of Salt Lake ) :SS

On this 5<sup>th</sup> day of March, 2015, personally appeared before me  
**Davis Mullholand**, whose identity is personally known to me or proved to me on the basis of  
satisfactory evidence, and who affirmed that he is the **Operating Manager**, of **Redwood L&B,**  
**LLC, a Utah limited liability company**, by authority of its members or its articles of organization,  
and he acknowledged to me that said limited liability company executed the same.

  
\_\_\_\_\_  
Notary Public



WHEN RECORDED RETURN TO:

West Valley City Recorder  
3600 South Constitution Blvd.  
West Valley City, Utah 84119

Space above for County Recorder's use

PARCEL ID NO: **15-21-255-004**

**WEST VALLEY CITY  
GRANT OF TEMPORARY CONSTRUCTION EASEMENT**

For valuable consideration, receipt whereof is hereby acknowledged, **Redwood L&B, LLC, a Utah limited liability company**, having an address of P.O. Box 25788, Salt Lake City, Utah 84125, GRANTOR, hereby grants and conveys to WEST VALLEY CITY, a Municipal Corporation, of the State of Utah, 3600 South Constitution Blvd., West Valley City, Utah 84119, GRANTEE, its successors and assigns, a temporary construction easement on, over, across and through GRANTOR'S land located at **2345 S. John Henry Drive**, for construction and replacement of improvements, said easement being described as follows:

A parcel of land situate in the Northeast Quarter of Section 21, Township 1 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

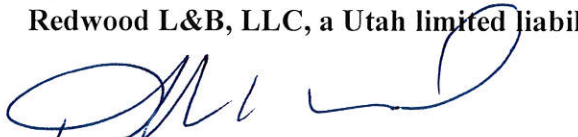
Beginning at a point on the Westerly Boundary Line of an entire tract of land defined in that certain Special Warranty Deed recorded December 21, 2001 as Entry No. 8099145, said point being North 00°04'22" West 334.44 feet along the Quarter Section Line and South 89°53'21" East 452.12 feet and North 00°04'22" West 340.00 feet from the Center of Section 21, Township 1 South, Range 1 West, Salt Lake Base and Meridian, thence North 00°04'22" West 463.48 feet coincident with said Westerly Boundary Line to the Northwest Corner of said entire tract; thence South 57°52'00" East 23.64 feet coincident with the Northerly Boundary Line of said entire tract; thence South 00°04'22" East 450.89 feet to a point on a Boundary Line of said entire tract; thence South 89°55'38" West 20.00 feet coincident with said Boundary Line to a point on said Westerly Boundary Line and the Point of Beginning. Contains 9,145 square feet or 0.210 acres.

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation, and enjoyment of the easement hereby granted, and all rights and privileges incident thereto.

This easement shall automatically terminate **June 30, 2016**, unless otherwise extended in writing by the GRANTOR.

WITNESSED the hand of said GRANTOR this 5<sup>TH</sup> day of MARCH,  
2015.

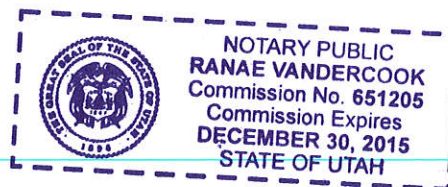
GRANTOR  
**Redwood L&B, LLC, a Utah limited liability company**

  
\_\_\_\_\_  
**Operating Manager**

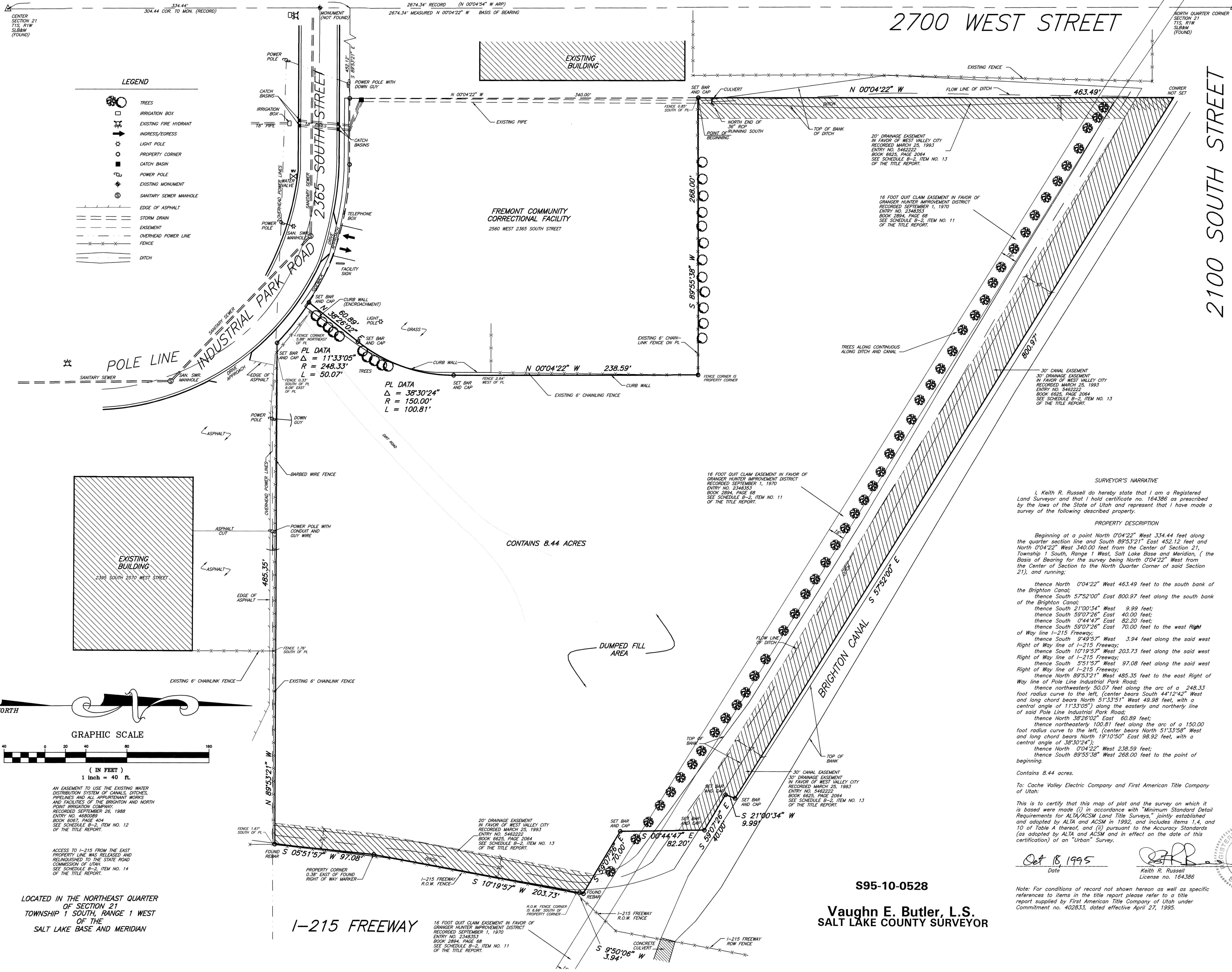
State of Utah )  
County of Salt Lake ) :SS

On this 5<sup>th</sup> day of March, 2015, personally appeared before me  
**Davis Mullholand**, whose identity is personally known to me or proved to me on the basis of  
satisfactory evidence, and who affirmed that he is the **Operating Manager**, of **Redwood L&B,**  
**LLC, a Utah limited liability company**, by authority of its members or its articles of organization,  
and he acknowledged to me that said limited liability company executed the same.

  
\_\_\_\_\_  
Notary Public







ENGINEERING

DESIGN

PLANNING

SURVEYING

4455 South 700 East, Suite 201  
Salt Lake City, Utah 84107  
tel (801) 283-2456  
fax (801) 283-2742

DESIGNED BY	W. MILLER	CHECKED BY	K. RUSSELL
DRAWN BY		PROJECT ENGINEER	
DATE		NO.	
DATE		NO.	

CACHE VALLEY ELECTRIC COMPANY  
ALT/ACSM LAND TITLE SURVEY  
2365 SOUTH POLELINE INDUSTRIAL PARK ROAD  
WEST VALLEY CITY, UTAH  
LILJENQUIST INVESTMENTS

DATE PLOTTED: 5-24-95  
PROJECT NO: 95-110  
SHEET: 1 OF 1

ALTA Tue Oct 17 16:40:36 1995 ENSIGN ENGINEERING/DJK